No. 24-10462

In the United States Court of Appeals for the Eleventh Circuit

UNITED STATES OF AMERICA,

Plaintiff-Appellant,

v.

EMMANUEL AYALA,

Defendant-Appellee.

Appeal from the United States District Court
for the Middle District of Florida
No. 8:22-cr-369-KKM-AAS-1

BRIEF OF THE NATIONAL RIFLE ASSOCIATION OF AMERICA AS *AMICUS CURIAE* IN SUPPORT OF DEFENDANT-APPELLEE AND AFFIRMANCE

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CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed entities as described in 11th Cir. R. 26.1-2(a) have an interest in the outcome of this case:

1. National Rifle Association of America, *amicus curiae*
2. Erin M. Erhardt, *counsel for amicus curiae*

/s/ *Erin M. Erhardt*
Counsel for *Amicus Curiae*

CORPORATE DISCLOSURE STATEMENT

The National Rifle Association of America has no parent corporation, nor is there any publicly held corporation that owns more than 10% of its stock.

/s/ *Erin M. Erhardt*
Counsel for *Amicus Curiae*

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STATEMENT OF *AMICUS CURIAE*[1]

The National Rifle Association of America (NRA) is America's oldest civil rights organization and foremost defender of Second Amendment rights. It was founded in 1871 by Union generals who, based on their Civil War experiences, sought to promote firearms marksmanship and expertise amongst the citizenry. Today, the NRA is America's leading provider of firearms marksmanship and safety training for both civilians and law enforcement. The NRA has approximately 4.2 million members, and its programs reach millions more.

The NRA has an interest in this case because the right to keep and bear arms encompasses the right to carry arms in public for self-defense, and that right does not end at the door of an unsecured government building.

CONSENT TO FILE

All parties consent to the filing of this brief.

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[1] No counsel for a party authored this brief in any part. No party or counsel contributed money intended to fund its preparation or submission. No person other than *Amicus* and its members contributed money intended to fund its preparation or submission.

SUMMARY OF ARGUMENT

The Supreme Court has clearly defined its test for evaluating firearms regulations: When the regulated conduct is covered by the Second Amendment's plain text, the Constitution presumptively protects that conduct, and the government must justify its regulation by demonstrating that it is consistent with historical tradition. The Post Office Ban fails that test.

The Second Amendment's plain text covers the conduct at issue in this case: carrying a handgun in public—specifically, at a post office—for self-defense. The government therefore must justify its ban on carrying at post offices with historical regulations.

The government cannot avoid its burden by alleging that post offices are "sensitive places." While the Supreme Court has recognized the existence of limited "sensitive places" where firearms may be prohibited, it has also recognized that "sensitive place" restrictions—like all restrictions—must be justified by history and tradition.

History and tradition do not support the Post Office Ban. Post offices have existed for 250 years—throughout the entire history of this country—yet the Post Office Ban was only enacted in 1972. Prior to that

time, firearm carry in post offices and by postal employees was not only tolerated but encouraged.

Post offices are not analogous to the historically recognized "sensitive" government locations where carrying could be prohibited: legislative assemblies, polling places, and courthouses. Unlike those locations, post offices are not centers of democratic government deliberation, which is the core component of the "sensitive place" designation for government buildings. And the government does not treat post offices as "sensitive": post offices do not generally enjoy enhanced security, which would lower the need for individuals to provide for their own defense. In other words, post offices have none of the hallmarks of traditional "sensitive places."

Because carrying in public is protected conduct, and no historical tradition supports prohibiting carry at post offices, the Post Office Ban violates the Second Amendment.

ARGUMENT

I. The Second Amendment's plain text covers carrying a handgun in public for self-defense.

"When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1, 24 (2022).

The Supreme Court has already held that "[t]he Second Amendment's plain text . . . presumptively guarantees . . . a right to 'bear' arms in public for self-defense." *Id.* at 33; *see also id.* at 10 ("the Second and Fourteenth Amendments protect an individual's right to carry a handgun for self-defense outside the home."); *see also District of Columbia v. Heller*, 554 U.S. 570, 584 (2008) ("bear arms" "refers to carrying for a particular purpose—confrontation."). Therefore, the government must justify its prohibition on carrying at post offices with historical tradition. *See Bruen*, 597 U.S. at 24.

II. "Sensitive place" firearms prohibitions must be historically justified.

Heller and *Bruen* recognized the existence of certain, limited "sensitive places" "where arms carrying could be prohibited consistent with the Second Amendment." *Bruen*, 597 U.S. at 30; *see also Heller*, 554 U.S. at 626–27. However, a legislature cannot simply designate any location "sensitive" and then ban firearms there. *Bruen*, 597 U.S. at 31 ([E]xpanding the category of 'sensitive places' simply to all places of public congregation that are not isolated from law enforcement defines the category of 'sensitive places' far too broadly."). For such designation to be constitutional, it must be historically justified under the same Second Amendment standard as any other firearms regulation.

Indeed, the *Bruen* Court declared that its text-and-history test was "*the standard* for applying the Second Amendment," 597 U.S. at 24 (emphasis added), and explained thrice that the *only* way the government can justify a firearms regulation is with historical tradition. *Id.* at 17 ("*Only if* a firearm regulation is consistent with this Nation's historical tradition may a court conclude that the individual's conduct falls outside the Second Amendment's unqualified command.") (quotation marks omitted and emphasis added); *id.* at 24 ("*Only then* may a court conclude

that the individual's conduct falls outside the Second Amendment's unqualified command.) (quotation marks omitted and emphasis added); *id.* at 34 ("*Only if* respondents carry that burden can they show that the pre-existing right codified in the Second Amendment . . . does not protect petitioners' proposed court of conduct.") (emphasis added).

The *Bruen* Court—and, more recently, the *Rahimi* Court—made clear that this historical test applies even to the "presumptively lawful" regulations identified in *Heller*, 554 U.S. at 627 n.26. *Heller* deemed three categories of "longstanding" laws "presumptively lawful": "prohibitions on the possession of firearms by felons and the mentally ill"; "laws imposing conditions and qualifications on the commercial sale of arms"; and "laws forbidding the carrying of firearms in sensitive places." *Id.* at 626–27 & n.26.

In *Bruen*, the government "attempt[ed] to characterize New York's proper-cause requirement as a 'sensitive-place' law." 597 U.S. at 30. The Court consulted "the historical record" to determine what "locations were 'sensitive places'" and concluded that "there is no historical basis for New York to effectively declare the island of Manhattan a 'sensitive place' simply because it is crowed and protected generally by the New York

Police Department." *Id.* at 30–31. *Bruen* thus held the alleged "sensitive place" restriction to the same historical standard that applies to all firearms regulations.

Rahimi similarly considered a regulation—18 U.S.C. § 922(g)(8)—that some lower courts had analogized to the "presumptively lawful" regulations on firearm possession by felons and the mentally ill. *United States v. Rahimi*, 144 S. Ct. 1889, 1902 (2024); *see also, e.g., United States v. Bena*, 664 F.3d 1180, 1184 (8th Cir. 2011) ("this statute—like prohibitions on the possession of firearms by violent felons and the mentally ill—is focused on a threat presented by a specific category of presumptively dangerous individuals."). Significantly, however, the *Rahimi* Court declined to assume the prohibition was "presumptively lawful." Instead, the Court analyzed Section 922(g)(8) the same way it analyzed the sensitive place argument in *Bruen*—by "considering whether the challenged regulation is consistent with the principles that underpin our regulatory tradition." *Rahimi,* 144 S. Ct. at 1898.

Bruen's and *Rahimi*'s treatment of "presumptively lawful" regulations is consistent with *Heller*, which indicated that those regulations must still be historically justified. The *Heller* Court specified

that "nothing *in our opinion* should be taken to cast doubt on" the "presumptively lawful" categories of regulations noted therein, 554 U.S. at 626 (emphasis added), and further asserted that "there will be time enough to expound upon *the historical justifications* for the exceptions we have mentioned if and when those exceptions come before us," 554 U.S. at 635 (emphasis added). Thus, it is a bridge too far to assert, as the government does here, that the constitutionality of those regulations is "settled and beyond doubt." Op. Br. 22. Rather, *Heller* merely maintained the status quo for those "presumptively lawful" regulations, leaving the historical and constitutional analysis thereof for a later day.

The Supreme Court has clearly and repeatedly defined its Second Amendment analysis. *See Bruen*, 597 U.S. at 17, 24; *Rahimi*, 144 S. Ct. at 1898. Not once has the Court articulated an exception for regulations it deemed "presumptively lawful" in *Heller*. Rather, the Court has expressly stated that "a court [may] conclude that the individual's conduct falls outside the Second Amendment's" protection "*[o]nly if* a firearm regulation is consistent with this Nation's historical tradition." *Bruen*, 597 U.S. at 17. Thus, for the Post Office Ban to stand, the

government must demonstrate that it is consistent with this country's historical tradition of firearm regulation. It cannot do so.

III. History and tradition do not support treating post offices as "sensitive places."

A. Firearm bans at post offices are a modern—not historical—phenomenon.

Historically, individuals were not prohibited from carrying firearms in post offices. The Continental Congress established the Post Office Department of the United States on July 26, 1775. Winifred Gallagher, HOW THE POST OFFICE CREATED AMERICA 26 (2016). The first postmaster general was Benjamin Franklin. *Id*. at 27. Yet the federal ban on firearms in post offices was not enacted until 1972, almost 200 years later. *See* 39 C.F.R. § 232.1(*l*) ("no person while on postal property may carry firearms, other dangerous or deadly weapons, or explosives, either openly or concealed, or store the same on postal property, except for official purposes").

Some debate exists over whether the most relevant time period for historical firearms regulations is the Founding era or the Reconstruction era. *Bruen*, 597 U.S. at 38 (recognizing the "ongoing scholarly debate on whether courts should primarily rely on the prevailing understanding of

an individual right" in 1791 or 1868); *Rahimi*, 144 S. Ct. at 1898 & n.1 (same). But there can be no question that a regulation that was enacted nearly 200 years after America's Founding and a century after Reconstruction comes far too late to be historically justified. *Bruen*, 597 U.S. at 66 & n.28 (late-19th-century and 20th-century evidence "cannot provide much insight into the meaning of the Second Amendment when [they] contradict[] earlier evidence.").

Bruen instructs that "when a challenged regulation addresses a general societal problem that has persisted since the 18th century, the lack of a distinctly similar historical regulation addressing that problem is relevant evidence that the challenged regulation is inconsistent with the Second Amendment." 597 U.S. at 26. Moreover, "if earlier generations addressed the societal problem, but did so through materially different means, that also could be evidence that a modern regulation is unconstitutional." *Id.* at 26–27.

Firearms, post offices, and the risk of firearms violence at post offices have all existed since the 18th century, but Congress did not enact a regulation prohibiting firearms at post offices until late into the 20th century. In fact, prior to 1972, earlier generations addressed the problem

of firearms violence not by banning firearms in post offices but by encouraging postal employees to train with and carry firearms. For instance, a May 1921 issue of the Greeley Tribune-Republican newspaper explained that "Greeley postal clerks are now carrying guns for protection against robbers. Post office clerks will be given revolvers by the National Post Office, and mail carriers will have shotguns for protection." Mike Peters, *100 Years Ago: Postal clerks, carriers start carrying guns for protection*, GREELEY TRIBUNE (May 2, 2021, 6:30 AM), https://www.greeleytribune.com/2021/05/02/100-years-ago-postal-clerks-carriers-start-carrying-guns-for-protection/. And in 1961, "[a]ll U.S. post offices were mandated to hold small-firearms training sessions and key postal personnel throughout the nation were being equipped with loaded .38-caliber Colt revolvers." Heather Shelton, *Throwback Thursday: Postal workers start packing pistols in 1961*, TIMES STANDARD (Feb. 18, 2020, 9:30 AM), https://www.times-standard.com/2018/09/27/throwback-thursday-postal-workers-start-packing-pistols-in-1961/; *see also Florida judge rules ban on guns in U.S. post offices is unconstitutional*, LINN'S STAMP NEWS (Jan. 29, 2024, 11:00 AM), https://www.linns.com/news/postal-updates/florida-judge-rules-ban-on-

guns-in-u.s.-post-offices-is-unconstitutional ("In 1961, Postmaster General Arthur Summerfield of the U.S. Post Office Department (precursor to the USPS) was urging postal employees to acquire firearms and learn how to defend themselves against criminals.").

Thus, under *Bruen*'s "fairly straightforward" inquiry the facts that the Post Office Ban was only enacted in 1972, the problem it sought to address has existed for centuries, and earlier generations addressed the problem through materially different means all suggest that the Post Office Ban is unconstitutional. 597 U.S. at 26; *accord Wolford v. Lopez*, No. 23-16164, 2024 WL 4097462, at *3 (9th Cir. Sept. 6, 2024) ("[B]anks have existed throughout our Nation's history, but the historical record does not demonstrate a comparable national tradition of banning firearms at banks. Applying *Bruen*'s guidance, we conclude that the Second Amendment likely prohibits a State from banning firearms in banks.").

B. Post offices cannot be analogized to historically "sensitive" government buildings.

When a regulation "implicate[s] unprecedented societal concerns or dramatic technological changes," the historical analysis "may require a more nuanced approach." *Bruen*, 597 U.S. at 27. As discussed *supra*, this

is not such a case—firearms, post offices, and the risk of firearms violence at post offices have all existed since this country's Founding. But even if the "more nuanced" approach was applicable here, the historical record still does not support treating post offices as "sensitive places."

Notably, *Bruen* suggests that "analogies to those historical regulations of 'sensitive places'" are appropriate only when considering "regulations prohibiting the carry of firearms in *new* and analogous sensitive places." 597 U.S. at 30 (emphasis in original). And post offices are anything but new. The Constitutional Post, the first American postal system independent from the British crown, was established in 1774. Gallagher, *supra*, at 25–26. The following year, it was transformed into the Post Office Department of the United States. *Id*. at 26. An institution that has existed for 250 years—the whole of America's existence—is not a new location that needs to be analogized to historically sensitive places. Rather, it is a historical location that was not historically treated as sensitive.

Nevertheless, the government would categorize post offices as "sensitive places" simply because they are government buildings, Op. Br. 34, and *Heller*'s list of "presumptively lawful" categories of regulations

includes "laws forbidding the carrying of firearms in sensitive places such as schools and government buildings," 554 U.S. at 626. But *Bruen* did not say that all government buildings are sensitive; rather *Bruen* points out that "the historical record yields relatively few 18th- and 19th-century" government buildings "where weapons were altogether prohibited": specifically, "legislative assemblies, polling places, and courthouses." 597 U.S. at 30. Even if analogies to historical "sensitive places" were appropriate—and they are not—post offices are analogous to none of these.

"*Heller* and *McDonald* point toward at least two metrics" that can determine whether regulations are "relevantly similar under the Second Amendment": "*how* and *why* the regulations burden a law-abiding citizen's right to armed self-defense." *Id*. at 29 (emphases added). Both the "how" and the "why" are different for post offices than for legislative assemblies, polling places, and courthouses. The latter are all places of government deliberation—the core functions of democratic government. Post offices are not. And since the earliest days of America, states treated legislative assemblies, polling places, and courthouses as "sensitive" by

providing for armed security at those locations. Post offices do not generally enjoy such protection.[2]

i. Post offices do not provide a core function of deliberative government.

Legislative assemblies, polling places, and courthouses are all bastions of government deliberation. Historically, arms prohibitions in these locations have been allowed in order to prevent interference with the deliberative process by means of armed intimidation.

Maryland forbade carrying arms in the state legislature over a century before the American Founding, in 1647 and 1650. 1647 Md. Laws 216; 1650 Md. Laws 273.

With regard to polling places, the only Founding era ban was in Delaware, which included an article in its Constitution banning arms at polling places, in order to prevent intimidation. DEL. CONST. art. 28

[2] The United States Postal Service does have a federal law enforcement arm, the United States Postal Inspection Service. However, the USPIS has only "approximately 2,400 employees—including nearly 1,300 Postal Inspectors, roughly 500 uniformed Postal Police Officers and 600" support personnel—not nearly enough to provide security for the over 30,000 postal properties across the country. *Security*, POSTAL FACTS, https://facts.usps.com/inspection-service/ (last visited Sept. 23, 2024); *see also Size and Scope*, POSTAL FACTS, https://facts.usps.com/size-and-scope/ (last visited Sept. 23, 2024) (stating that the USPS has "22,873 leased properties" and "owns 8,500 properties around the country.").

(1776). More polling place bans followed during the Reconstruction era, when groups like the Ku Klux Klan would show up armed to prevent blacks and Republicans from voting. *See* David B. Kopel & Joseph G.S. Greenlee, *The "Sensitive Places" Doctrine: Locational Limits on the Right to Bear Arms*, 13 CHARLESTON L. REV. 205, 244–45 (2018). During the 1870s and 1880s, two states and two counties enacted laws restricting firearms carry on election days. 1870 La. Acts 159–60 (Louisiana law prohibiting all carry of firearms and other dangerous weapons "on any day of election during the hours the polls are open, or on any day of registration or revision of registration, within a distance of one-half mile of any place of registration or revision"); 2 A DIGEST OF THE LAWS OF TEXAS 1317–18 (4th ed. 1874) (Texas law prohibiting all carry of firearms and other dangerous weapons "on any day of election, during the hours the polls are open, within a distance of one half mile of any place of election"); 2 PUBLIC LOCAL LAWS OF MARYLAND, art. 11–24, at 1457 (King Bros, ed. 1888) (Kent County law prohibiting carry of firearms and other weapons "on the days of election"); 1886 Md. Laws 315 (Calvert County

law prohibiting all carry of firearms and other weapons "on the days of election and primary election within three hundred yards of the polls").[3]

The state of Georgia prohibited carrying arms into a court of justice. R.H. Clark, THE CODE OF THE STATE OF GEORGIA (1873), § 4528 (1870 law); *see also State v. Hill*, 53 Ga. 472 (1874). In the first case analyzing a "sensitive place" ban, the Georgia Supreme Court upheld the prohibition, holding that "the right to go into a court-house and peacefully and safely seek its privileges, is just as sacred as the right to carry arms." *Hill*, 53 Ga. at 477–78. Moreover, one's "right of free access to the courts is just as much restricted" by armed intimidation in the courtroom "as is the right to bear arms infringed by prohibiting the practice before courts of justice." *Id.* at 478. Thus, a limited prohibition on carrying arms was justified for "the fulfillment of other constitutional duties . . . provided the restriction does not interfere with the ordinary bearing and using

[3] In fact, according to gun control advocates Giffords, even as recently as the 2020 election, only "[s]ix states and the District of Columbia explicitly prohibit guns at polling locations altogether, while an additional four states prohibit concealed firearms at the polls." *Preventing Armed Voter Intimidation*, GIFFORDS LAW CENTER (Sept. 25, 2020), https://giffords.org/lawcenter/report/preventing-armed-voter-intimidation-a-state-by-state-analysis/.

arms, so that the 'people' shall become familiar with the use of them." *Id.* at 483.

Thus, history shows that the only government buildings that were traditionally considered "sensitive places" were those that were "centers of government deliberation"—places where disputes were settled, where laws were made, and where votes were cast. *See* Kopel & Greenlee, *The "Sensitive Places" Doctrine*, 13 CHARLESTON L. REV. at 244. While post offices may play an important role in national communication, they do not serve a core function of government deliberation and are therefore not "sensitive" for the same reasons—*Bruen*'s "why"—as legislative assemblies, polling places, and courthouses.

ii. Post offices are not treated as "sensitive" by the government.

In addition to being homes of government deliberation, the core government buildings historically considered "sensitive places"—"legislative assemblies, polling places, and courthouses," *Bruen*, 597 U.S. at 30—shared another important characteristic: they were protected by armed security. And when the government assumes security for a location, the need for armed self-defense is reduced.

a. Legislative Assemblies

By 1800, several state legislatures paid guards. PROVINCIAL CONGRESS, JOURNAL OF THE VOTES AND PROCEEDINGS OF THE PROVINCIAL CONGRESS OF NEW-JERSEY: HELD AT TRENTON IN THE MONTH OF OCTOBER 1775, at 239–40 (1835) (outlining payment "to the door keeper"); 10 THE STATUTES AT LARGE OF PENNSYLVANIA FROM 1682 TO 1801, at 376, 378 (Wm. Stanley Ray 1904) (outlining fees for "The sergeant-at-arms," "The door-keeper of the council and the door-keeper of the house of assembly"); JOURNAL OF THE HOUSE OF DELEGATES OF THE COMMONWEALTH OF VIRGINIA 77 (Printed by Thomas W. White, 1828) (providing "allowances" for the sergeant-at-arms and door-keepers); THE PUBLIC LAWS OF THE STATE OF SOUTH-CAROLINA 426–27 (1790) (providing for the payment of "Two Door-keepers"); 2 LAWS OF THE STATE OF DELAWARE 1100, 1118 (1797) (outlining "fees belonging to the Sergeant at Arms" and "Fees to the Door-keepers of the respective Houses"); THE PUBLIC LAWS OF THE STATE OF RHODE-ISLAND 220, 222 (1798) ("Sheriffs," "Town Sergeants, and Constables" are allowed fees for "attending the General Assembly"); 2 THE LAWS OF THE STATE OF VERMONT 382, 387 (1808) (1798 law providing compensation for sheriffs and constables for "attendance on the general assembly").

More states followed suit during the first decade of the 1800s. *See* 1 LAWS OF THE STATE OF NEW YORK 532 (2nd ed. 1807) (allocating funds for "the serjeant at arms and the door keepers of the senate and assembly"); A COMPILATION OF THE LAWS OF THE STATE OF GEORGIA 372–73 (1812) (1808 law providing funds "to the messenger and door-keeper of the Senate, and messenger and door-keeper of the House of Representatives"). Thus, by the end of the 1810s, nine of the seventeen states then admitted to the Union provided for paid armed security at their legislative assemblies.

b. Court Proceedings

Fully thirteen of the sixteen states admitted by the turn of the 19th century provided for armed security at court proceedings. Five states required the attendance of sheriffs or constables as a matter of course. THE PUBLIC LAWS OF THE STATE OF SOUTH-CAROLINA 268, 271 (1790) (providing that "sheriffs shall by themselves, or their lawful deputies respectfully, attend all the courts hereby appointed, or directed to be held, within their respective districts."); A COLLECTION OF ALL SUCH ACTS OF THE GENERAL ASSEMBLY OF VIRGINIA 69–71 (1803) (1792 law stating "The keeper of the public jail, shall constantly attend the General Court"

and "the Sheriff, or so many of the Under-Sheriffs as shall be thought necessary, of the County where such Court may be held, shall attend the said Court during their Sessions."); 2 LAWS OF THE STATE OF DELAWARE 1088, 1091 (1797) (1793 law providing that "the Sheriff of Kent county . . . shall be attendant on the said High Court of Errors and Appeals during the sitting thereof."); LAWS OF THE STATE OF NEW JERSEY 49, 50, 58 (Joseph Bloomfield ed., 1811) (1798 law providing that "the constables of the several townships in such county shall be the ministerial officers of the said court" and "shall be appointed to attend the jury."); 1 LAWS OF THE STATE OF NEW YORK 172 (2nd ed. 1807) (1801 law requiring "sheriffs and their officers" to attend court "to do those things which to their officers shall appertain."). A sixth did not outright require such attendance, but gave courts "power to . . . compel the attendance of sheriffs, coroners, constables, and other ministerial officers." 10 THE STATUTES AT LARGE OF PENNSYLVANIA FROM 1682 TO 1801, at 57 (Wm. Stanley Ray 1904) (1780 law).

Another seven states provided compensation for sheriffs and constables to attend court proceedings. ACTS AND LAWS OF THE STATE OF CONNECTICUT, IN AMERICA 63–65 (1784) (outlining a fee schedule for

court attendance by sheriffs and constables); ACTS AND RESOLVES OF MASSACHUSETTS 235 (1893) (1786 law providing for payment to "[e]very Constable who shall attend the Supreme Judicial Court, or Court of General Sessions of the Peace, or Common Pleas."); A DIGEST OF THE LAWS OF THE STATE OF GEORGIA 471, 473–74, 478 (1800) (1792 law providing for fees for court attendance for sheriffs and constables); THE LAWS OF THE STATE OF NEW-HAMPSHIRE 112–16 (1797) (providing "Sheriff's fees" for "every trial," "attending the grand jury," and "attending the petit jury."); THE PUBLIC LAWS OF THE STATE OF RHODE-ISLAND 220, 222 (1798) ("The Sheriffs" and "Town Sergeants, and Constables" "shall be allowed" fees for attendance at "the Supreme Judicial Court, and the Courts of Common Please, by the day."); 2 THE LAWS OF THE STATE OF VERMONT 382, 387 (1808) (1798 law providing for payment to sheriffs and constables for "attending before a justice's court, when required," "attending freeholders' courts," and "attendance on the . . . supreme or county court."); 1 THE LAW OF MARYLAND TO WHICH ARE PREFIXED THE ORIGINAL CHARTER, ch. XXV (1799) (providing for payment for "[e]very Constable who shall attend the Supreme Judicial Court, or Court of General Sessions of the Peace, or Common Pleas.").

c. Polling Places

A handful of states during the Founding era also provided security at polling places. Maryland, Virginia, and South Carolina accomplished this by having sheriffs administer and judge elections. MD. CONST. art. 1, §§ 3, 14 (1776) ("[T]he Sheriff of each county, or . . . his Deputy . . . shall hold and be the judge of the said election"); ABRIDGEMENT OF THE PUBLIC PERMANENT LAWS OF VIRGINIA 325 (1796) (1778 law providing that "[t]he sheriff shall attend and take the poll at such election, entering the names of the persons voted for."); THE PUBLIC LAWS OF THE STATE OF SOUTH-CAROLINA 386–88 (1790) (providing payment to the sheriffs for "publishing writs for electing members of the General Assembly, taking the ballots and returning the writ."); 2 LAWS OF THE STATE OF DELAWARE 984 (1797) ("the Sheriffs" and other officials are "to attend, conduct, and regulate the election."). Similarly, Georgia and New Jersey required the attendance of sheriffs or constables specifically for purposes of keeping the peace. A DIGEST OF THE LAWS OF THE STATE OF GEORGIA 611 (1800) (sheriffs must attend elections "for the purpose of enforcing the orders of the presiding magistrates in preserving good order."); LAWS OF THE STATE OF NEW JERSEY 36 (Joseph Bloomfield ed. 1811) (providing constables and

other election officers with authority to detain "riotous" or "disorderly" people to maintain "good order" and "for the security of the election officers from insult and personal abuse.").

In *Bonidy v. U.S. Postal Service*, the Tenth Circuit considered a ban on the possession of firearms in a post office and its parking lot. 790 F.3d 1121, 1122–23 (10th Cir. 2015). The Court upheld the regulation under intermediate scrutiny—a standard no longer applicable to Second Amendment challenges. *Id.* at 1123; *see also Bruen*, 597 U.S. at 19 ("*Heller* and *McDonald* do not support applying means-end scrutiny in the Second Amendment context"); *Koons v. Platkin*, 673 F.Supp.3d 515, 605 (D.N.J. 2023) ("[A] question remains whether the USPS regulation could survive scrutiny given *Bruen*").

Judge Tymkovich agreed that the ban in the post office itself was valid under intermediate scrutiny, but would have invalidated the ban on possession in the adjacent parking lot. *Bonidy*, 790 F.3d at 1130 (Tymkovich, J., concurring in part and dissenting in part). Judge Tymkovich presciently provided a spectrum for determining whether a location should be considered sensitive. *Id.* at 1137. While his analysis specifically discussed ancillary locations—there, a parking lot adjacent to

a post office—in a post-*Bruen* world, his analysis is useful in determining whether any location is sufficiently secured to be considered analogous to a historically sensitive government building.

On one end of the spectrum are the White House and its lawn—they are protected by fences, limited entry points, and armed security. "Consequently, the presumption of lawfulness for a regulation penalizing firearm possession there might approach the categorical." *Id.* at 1137. But, Judge Tymkovich continued:

> At the spectrum's other end we might find a public park associated with no particular sensitive government interests—or a post office parking lot surrounding a run-of-the-mill post office. Perhaps such locations are "sensitive" in the sense that the government always has an interest in protecting its property or visitors. But without more concrete evidence of particular vulnerability, any presumption of lawfulness for a firearm regulation cannot control.

Id. In a post-*Bruen* world, Judge Tymkovich's analysis of a post office parking lot applies just as well to a post office itself. Post offices, unlike the White House or legislative assemblies, do not maintain secured points of entry, nor are they generally protected by armed security.

The government may not deem a post office "sensitive" simply because it is a government-owned operation when it does not also treat a

post office as a "sensitive place" by providing limited access and enhanced security.

Because post offices are not home to a core deliberative function of democratic government, and because they are not treated as "sensitive" by the government—for instance, through the presence of armed security—post offices are not "sensitive places" and the Post Office Ban is unconstitutional.

***

CONCLUSION

The district court's judgment should be affirmed.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) because this brief contains 4,886 words, excluding the parts of the brief excluded by Fed. R. App. P. 32(f).

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CERTIFICATE OF SERVICE

I certify that on September 24, 2024, I served the foregoing with the Clerk of the Court using the ACMS System, which will send notice of such filing to all registered ACMS users.

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