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ARTICLE

TAKE YOUR GUNS TO CHURCH: THE SECOND AMENDMENT AND CHURCH AUTONOMY

Benjamin Boyd[†]

And David said unto Ahimelech, And is there not here under thine hand spear or sword? . . . And the priest said, The sword of Goliath the Philistine, whom thou slewest in the valley of Elah, behold, *it is here wrapped in a cloth behind the ephod*: if thou wilt take that, take it: for there is no other save that here. And David said, There is none like that; give it me.¹

And to the captains over hundreds did the priest give king David's spears and shields, that were in the temple of the LORD. And the guard stood, every man with his weapons in his hand, round about the king, from the right corner of the temple to the left corner of the temple, along by the altar and the temple.²

I. INTRODUCTION: [DON'T] TAKE YOUR GUNS TO CHURCH³

In its colonial past, Georgia required men to take their guns to church. Colonial Georgia had a law requiring that everyone eligible for militia service who resorted

on any Sunday or other times, to any church, or other place of divine worship within the parish where such person shall reside, shall carry with him a gun, or a pair of pistols, in good order and fit for service, with at least six charges of gun-powder and ball, and shall take the said gun or pistols with him to the pew or seat,

† Staff Attorney to Chief Justice Roy S. Moore, Chief Justice of the Alabama Supreme Court. Special thanks to Matthew Clark, Lael Weinberger, Benjamin Walton, Melanie Migliaccio, and the Hon. Keith Kautz for their patient listening, advice, and assistance with this article. A very special thanks to Mrs. Sheryl Boyd, and to Gloriana, Zion, Jamin, and Calvin, who are five good reasons to take a gun to church. Most of all, grateful praise to the King, Jesus Christ. © 2014 Benjamin Boyd; LIBERTY UNIVERSITY LAW REVIEW.

1. 1 *Samuel* 21:8–9 (King James) (emphasis added).
2. 2 *Kings* 11:10–11 (King James) (emphasis added).
3. To turn Johnny Cash's phrase: "Don't take your guns to [church], son. Leave your guns at home, Bill. Don't take your guns to [church]." JOHNNY CASH, *DON'T TAKE YOUR GUNS TO TOWN* (Columbia Records 1958).

where such person shall sit, remain, or be, within or about the said church or place of worship[.]⁴

Men who did not comply faced a small fine.⁵ The colonial law required church wardens, deacons, and elders “to examine all such male persons, at any time after the congregation is assembled, on Christmas and Easter days, and at least twelve other times in every year” as to whether “persons liable to bear arms” “to places of public worship” appeared there “without the arms and ammunition by this act directed.”⁶ Church leaders who neglected this duty faced a sizeable fine.⁷ The times, however, have changed indeed. Today, if one carries “a gun, or pair of pistols” into a church in Georgia, he commits a misdemeanor.⁸ However, if a concealed-carry licensee approaches church security or management upon arrival, the misdemeanor punishment does not apply if he or she “notifies such security or management personnel of the presence of the weapon or long gun and explicitly follows the security or management personnel’s direction for removing, securing, storing, or temporarily surrendering such weapon or long gun[.]”⁹ Some of our forefathers were required to bears arms in church. What was once required is now prohibited, and some of our forefathers’ descendants must disarm themselves in church.¹⁰

This Article focuses on the tensions between weapon laws aimed at the Church¹¹ on the one hand and the jurisdictional autonomy of the Church and constitutional protections of the Church and Church members on the other.¹² This Article contends that the State lacks both the jurisdictional and constitutional authority to regulate weapons in the Church. As a solution to

4. 19 COLONIAL RECORDS OF THE STATE OF GEORGIA 138 (Allen D. Candler ed., 1911), available at http://books.google.com/books?id=bgMMAAAAYAAJ&printsec=frontcover&source=gbs_ge_summary_r&cad=0#v=onepage&q&f=false. At the time, the militia was limited to white males. *Id.*

5. *Id.* The fine was ten shillings. *Id.*

6. *Id.* at 139.

7. *Id.*

8. GA. CODE ANN. § 16-11-127(b)(4) (West, Westlaw through 2013 Legis. Sess.).

9. GA. CODE ANN. § 16-11-127(d)(2) (West, Westlaw through 2013 Legis. Sess.).

10. JOHNNY CASH, *supra* note 3.

11. This article uses “Church” in its corporate sense as the catholic, or *universal*, body of Christ composed of various local church assemblies and the members thereof in these United States.

12. This article does not question the lawfulness of statutes that require eligible men to be prepared for militia service, but does question the propriety of the State enforcing militia laws in the Church (as a place for gathering the militia).

the State's regulation of weapons in the Church, this Article proposes that the Church and churchgoers must challenge such statutes through the Church's autonomous jurisdiction and also through the First and Second Amendments.

This Article begins by surveying the problem: weapon laws aimed at the Church. Then, as to the Church's jurisdiction, this Article explains the historical and legal basis of the jurisdictional separation of Church and State, known as church autonomy. Second, this Article surveys the biblical basis for church autonomy, the views of Madison and Jefferson on church autonomy, and United States Supreme Court precedent on church autonomy. Third, this Article examines the central location of church autonomy—the sanctuary. This Article surveys the privilege of sanctuary, biblical sanctuary law, the common law privilege of sanctuary, the abolition of ecclesiastical sanctuary, and the rise of statist sanctuary laws. Then, this Article proposes a jurisdictional solution: apply the principles of church autonomy to the specific weapon laws aimed at the Church.

As to the Church's and churchgoers' constitutional protections, this Article first considers whether constitutional challenges to weapon laws aimed at the Church are plausible in light of *GeorgiaCarry.Org v. Georgia*, a recent federal court decision on the subject. Second, this Article argues that weapon laws aimed at churches violate the plain text and history of the Second Amendment and proposes how to frame a Second Amendment challenge to such laws. Third, this Article argues alternatively that under current United States Supreme Court First Amendment jurisprudence, a successful Free Exercise Clause challenge to such statutes may be made under both rational-basis review and strict-scrutiny review.

In conclusion, this Article proposes how to frame a biblical defense of armed self-defense in the Church. This biblical defense of armed self-defense in the Church applies with equal force to each of the jurisdictional and constitutional solutions proposed in this Article.

II. THE PROBLEMS: WEAPON LAWS AIMED AT CHURCHES

A. *Total Weapon Bans and Concealed-Carry Bans*

North Dakota regulates the Church with a near-complete ban on firearms. North Dakota law provides: “[a]n individual who possesses a firearm . . . at a public gathering is guilty of a class B misdemeanor.”¹³ The

13. N.D. CENT. CODE § 62.1-02-05(1) (West, Westlaw through 2013 Legis. Sess.).

statute makes no distinction between open carry and concealed carry. For the purpose of this section, “public gathering” includes . . . churches or church functions[.]”¹⁴ The statute does not affect armed security officers, for the local churches that may have security officers.¹⁵ In addition, North Dakota’s political subdivisions may enact firearms ordinances that are “less restrictive than this section relating to the possession of firearms . . . at a public gathering,”¹⁶ thus allowing North Dakota’s ban on firearms at churches or church functions to be lifted on a county-wide or city-wide basis.

Michigan, Missouri, and South Carolina regulate the Church with blanket bans on concealed-carry in church but permit local church leaders to authorize concealed-carry at their discretion.¹⁷ An Arkansas concealed handgun license does not “authorize[] any person to carry a concealed handgun into . . . [a]ny church or other place of worship.”¹⁸ A Mississippi concealed weapons license does not “authorize any person to carry a stun gun, concealed pistol or revolver into . . . any church or other place of

14. *Id.*

15. N.D. CENT. CODE § 62.1-02-05(2) (West, Westlaw through 2013 Legis. Sess.). This statute does not apply to “[p]rivate security personnel while on duty.” *Id.* The easy solution—short of a lawsuit for a declaratory judgment, which would be costly—for North Dakota’s ban on weapons at church and church functions is for local churches to deputize some of their members as church security officers.

16. N.D. CENT. CODE § 62.1-02-05(3) (West, Westlaw through 2013 Legis. Sess.).

17. *See, e.g.*, MICH. COMP. LAWS ANN. § 28.425o(1)(e) (West, Westlaw through 2013 Legis. Sess.) (“[A]n individual licensed . . . to carry a concealed pistol . . . shall not carry a concealed pistol on the premises of . . . [a]ny property or facility owned or operated by a church, synagogue, mosque, temple, or other place of worship, unless the presiding official or officials . . . permit the carrying of concealed pistol on that property or facility.”); MO. REV. STAT. § 571.107(1)(14) (West, Westlaw through 2013 Ex. Sess.) (A Missouri concealed weapons endorsement does not authorize the licensee to carry concealed firearms into: “[a]ny church or other place of religious worship without the consent of the minister or person or persons representing the religious organization that exercises control over the place of religious worship.”); S.C. CODE ANN. § 23-31-215(M)(9) (West, Westlaw through 2013 Legis. Sess.) (A South Carolina concealed weapons permit “does not authorize a permit holder to carry a concealable weapon into a . . . church or other established religious sanctuary unless express permission is given by the appropriate church official or governing body[.]”); WY. STAT. ANN. § 6-8-104(t)(viii) (West, Westlaw through 2013 Legis. Sess.) (Wyoming law forbids those “authorized to carry a concealed weapon . . . [to] carry a concealed firearm into . . . [a]ny place where persons are assembled for public worship, without the written consent of the chief administrator of that place”).

18. ARK. CODE ANN. § 5-73-306(16) (West, Westlaw through 2013 1st Ex. Sess.).

worship.”¹⁹ A Nebraska concealed weapon “permitholder may carry a concealed handgun anywhere in Nebraska, except any . . . place of worship.”²⁰

B. *Louisiana: Regulations for Church Government*

Louisiana’s concealed-carry statute regulates the Church by providing that “[n]o concealed handgun may be carried into and no concealed handgun permit issued pursuant to this Section shall authorize or entitle a permittee to carry a concealed handgun in . . . [a]ny church, synagogue, mosque, or other similar place of worship . . . except as provided for in Subsection U of this Section.”²¹ Subsection U provides that:

[t]he entity which owns the business or has authority over the administration of a church, synagogue, or mosque shall have the authority to authorize any person issued a valid concealed handgun permit . . . to carry a concealed handgun in the church, synagogue, or mosque.²²

Louisiana places additional regulations upon the Church where a local church authorizes persons to carry a concealed handgun in the sanctuary. First, if the church authorizes the carrying of concealed handguns, the leader of the church *must* inform the congregation of this authorization.²³ Second, if a church authorizes concealed carry, the place of worship *must* require “an additional eight hour tactical training for those persons wishing to carry concealed handguns in the church The training shall be conducted annually.”²⁴

C. *Georgia: A Weapons Ban or Regulation of Church Government?*

Georgia’s carry law regulates the Church by providing that: “[a] person shall be guilty of carrying a weapon . . . in an unauthorized location . . . when he or she carries a weapon . . . [i]n a place of worship[.]”²⁵ However, this penalty does not apply:

19. MISS. CODE ANN. § 45-9-101(13) (West, Westlaw through 2013 2d Ex. Sess.).

20. NEB. REV. ST. ANN. § 69-2441(1)(a) (West, Westlaw through 2013 Leg. Sess.).

21. LA. REV. STAT. ANN. § 40:1379.3(N)(8) (West, Westlaw through 2013 Legis. Sess.).

22. LA. REV. STAT. ANN. § 40:1379.3(U)(1) (West, Westlaw through 2013 Legis. Sess.).

23. LA. REV. STAT. ANN. § 40:1379.3(U)(3) (West, Westlaw through 2013 Legis. Sess.).

24. LA. REV. STAT. ANN. § 40:1379.3(U)(5) (West, Westlaw through 2013 Legis. Sess.).

25. GA. CODE ANN. § 16-11-127(b)(4) (West, Westlaw through 2013 Legis. Sess.).

[t]o a license holder who approaches security or management personnel upon arrival... and notifies such security or management personnel of the presence of the weapon or long gun and explicitly follows the security or management personnel's direction for removing, securing, storing, or temporarily surrendering such weapon or long gun[.]²⁶

Georgia's current statute was amended in 2010. The original senate bill would have allowed weapons to be carried in churches. Many Georgia churches advocated for this freedom after finding that Georgia's old "Public Gathering Law" limited the Church's power to control the possession of firearms on local church property.²⁷ However, Georgia's House Committee on the Judiciary changed the senate's original intent and made it a violation to carry a weapon into a church and also "remove[d] the discretion given to presiding officials of places of worship to permit carrying."²⁸ The Conference Committee on the bill reinserted an earlier provision allowing a concealed-carry licensee to approach security personnel in churches.²⁹ Hudson and Adams opined that "[t]he Act [] establishes that *guns may not be carried* in places of worship."³⁰

However, the Eleventh Circuit Court of Appeals had another reading of Georgia's statute and opined that "[t]he plain language of the Carry Law belies any argument that all firearms are per se prohibited from a place of worship; quite simply, this is not the 'ban' that Plaintiffs make it out to be."³¹ The federal judges reasoned, "[b]ecause a place of worship is *private property*, not public property, it is particularly important that we understand the individual right to bear arms in light of . . . property law; for that body of law establishes the rights of *private property owners*."³² The panel of judges stated that:

26. GA. CODE ANN. § 16-11-127(d)(2) (West, Westlaw through 2013 Legis. Sess.).

27. Danielle Hudson & Sara Adams, *Crimes and Offenses*, 27 GA. ST. U. L. REV. 131, 137-38 (2010). Hudson and Adams detail the legislative history for Georgia's Code section 16-11-127.

28. *Id.* at 140-41. Hudson and Adams indicated that this was a "compromise" in order to "get something done." *Id.* at 142.

29. *Id.* at 145.

30. *Id.* at 146 (emphasis added).

31. *GeorgiaCarry.Org, Inc. v. State of Georgia*, 687 F.3d 1244, 1261 n.36 (11th Cir. 2012).

32. *Id.* at 1261.

“[T]he Second Amendment does not include protection for a right to carry a firearm in a place of worship against the owner’s wishes. Quite simply, there is no constitutional infirmity when a private property owner exercises his, her, or its—in the case of a place of worship—right to control who may enter, and whether that invited guest can be armed, and the State vindicates that right.”³³

If the Eleventh Circuit’s reading of this statute is correct, then Georgia’s carry law is not a complete ban; the statute merely regulates the Church, rather than preempting the Church’s decisions. The Eleventh Circuit’s reading, however, does not do justice to the plain text of the statute or the legislative history. If Georgia’s law deferred to the jurisdictional autonomy and the private property rights of the Church, the statutory language would make that clear³⁴ and permit the Church to authorize the presence of weapons in the sanctuary.³⁵

D. *Statutes That Indirectly Ban Weapons in the Church*

1. Church Schools and Parochial Schools

Many weapon laws aimed at protecting school children and teachers effectively ban weapons at church schools and parochial schools, thus indirectly regulating weapons in the Church. In Arizona, a person commits criminal misconduct when he knowingly possesses “a deadly weapon on school grounds,”³⁶ which includes “a public or nonpublic kindergarten

33. *Id.* at 1264.

34. The Code of Georgia prohibits concealed-carry “[i]n a bar, *unless the owner of the bar permits the carrying of weapons or long guns by license holders.*” GA CODE ANN. § 16-11-127(b)(6) (West, Westlaw through 2013 Legis. Sess.) (emphasis added). Subsection (b)(4) does not have this language, but the Eleventh Circuit essentially read (b)(4) into (b)(6) to come up with the whole property rights analysis.

35. *Cf.* W. VA. CODE § 61-7-14 (West, Westlaw through 2013 1st Extraordinary Sess.) (“[A]ny owner, lessee or other person charged with the care, custody and control of real property may prohibit the carrying openly or concealing of any firearm or deadly weapon on property under his or her domain[.]” If concealed or open carry is prohibited, “[a]ny person carrying or possessing a firearm or other deadly weapon on the property of another” has the option of (1) temporarily relinquishing possession of the firearm upon being requested to do so or (2) leaving the premises. *Id.*

36. ARIZ. REV. STAT. ANN. § 13-3102(A)(12) (West, Westlaw through 1st Legis. Sess. of 51st Legislature).

program, common school or high school.”³⁷ An Arkansas carry permit does not entitle the person to “carry a concealed handgun [into] . . . [a] school, college, community college, or university campus building or event, unless for the purpose of participating in an authorized firearms-related activity.”³⁸ Delaware provides that a person who carries a concealed deadly weapon “while in or on a ‘Safe School and Recreation Zone’” is guilty of a felony.³⁹

The District of Columbia declares certain areas “gun free zones,” which include:

All areas within, 1000 feet of an appropriately identified public or private day care center, elementary school, vocational school, secondary school, college, junior college, or university, or any public swimming pool, playground, video arcade, youth center, or public library . . . or an event sponsored by any of the above entities[.]⁴⁰

A Florida carry license “does not authorize any person to openly carry a handgun or carry a concealed weapon or firearm into . . . [a]ny elementary or secondary school facility.”⁴¹

Georgia law states, “it shall be unlawful for any person to carry to or to possess or have under such person’s control while within a school safety zone or at a school building, school function, or school property . . . any weapon[.]”⁴² “School safety zone” is:

[I]n or on any real property owned by or leased to any public or private elementary school, secondary school, or school board and used for elementary or secondary education and in or on the campus of any public or private technical school, vocational

37. ARIZ. REV. STAT. ANN. § 13-3102(M)(4) (West, Westlaw through 1st Legis. Sess. of 51st Legislature).

38. ARK. CODE ANN. § 5-73-306(14) (West, Westlaw through 2013 Legis. Sess.).

39. 11 DEL. CODE ANN. § 1457(a); (b)(1)–(2) (West, Westlaw through 79 Laws 2013, chs. 1–185). “Safe School and Recreation Zone” includes any building, structure or real property owned, operated, leased or rented by any public or private school from the kindergarten level up to university, within 1000 feet of such building, structure, or real property. 11 DEL. CODE ANN. § 1457(c)(1) (West, Westlaw through 79 Laws 2013, chs. 1–185).

40. D.C. CODE § 22-4502.01(a) (West, Westlaw through Oct. 16, 2013).

41. FLA. STAT. ANN. § 790.06(12)(a)(10) (West, Westlaw through 1st 2013 Legis. Sess. of 23d Legislature).

42. GA. CODE ANN. § 16-11-127.1(b)(1) (West, Westlaw through 2013 Legis. Sess.).

school, college, university, or institution of postsecondary education.⁴³

Illinois recently passed the Firearm Concealed Carry Act, HB0173,⁴⁴ which enjoins carrying weapons into any private school, public school, pre-schools,⁴⁵ colleges and universities.⁴⁶ Maine law provides: “A person may not possess a firearm on public school property or the property of an approved private school or discharge a firearm within 500 feet of public school property or the property of an approved private school.”⁴⁷ A Mississippi carry permit does not authorize carrying a concealed pistol into “any elementary or secondary school facility; any junior college, community college, college or university facility.”⁴⁸

A Nebraska carry permit does not authorize concealed-carry into any:

[B]uilding, grounds, vehicle, or sponsored activity or athletic event of any public, private, denominational, or parochial elementary, vocational, or secondary school, a private postsecondary career school . . . a community college, or a public or private college, junior college, or university.⁴⁹

New Mexico’s carry law does not authorize a licensee “to carry a concealed handgun on school premises.”⁵⁰ North Carolina provides a felony “for any person knowingly to possess or carry, whether openly or concealed, any gun, rifle, pistol, or other firearm of any kind on educational property or to a curricular or extracurricular activity sponsored by a school,”⁵¹ which is any “public or private school, community college, college, or university.”⁵² North Dakota provides a misdemeanor for “an individual who possesses a

43. GA. CODE ANN. § 16-11-127.1(a)(1) (West, Westlaw through 2013 Legis. Sess.).

44. Illinois General Assembly, HB0183, §1 (2013), available at <http://www.ilga.gov/legislation/98/HB/PDF/09800HB0183lv.pdf>.

45. *Id.* § 65(a)(1)–(2).

46. *Id.* § 65(a)(15).

47. ME. REV. STAT. 20-A, § 6552(1) (West, Westlaw through 2013 1st Legis. Sess. & 1st Special Legis. Sess.).

48. MISS. CODE ANN. § 45-9-101(13) (West, Westlaw through 2013 2d Ex. Sess.).

49. NEB. REV. ST. ANN. § 69-2441(1)(a) (West, Westlaw through 2013 Legis. Sess.).

50. N. M. STAT. ANN. § 29-19-8(B) (West, Westlaw through 1st Legis. Sess. of 51st Legislature).

51. N.C. Gen. Stat. Ann. § 14-269.2(b) (West, Westlaw through 2013 Legis. Sess.).

52. N.C. Gen. Stat. Ann. § 14-269.2(a)(1b) (West, Westlaw through 2013 Legis. Sess.).

firearm . . . at a public gathering,”⁵³ which includes “schools or school functions.”⁵⁴

Pennsylvania law states that “[a] person commits a misdemeanor of the first degree if he possesses a weapon in the buildings of, on the grounds of . . . any elementary or secondary private school . . . or any elementary or secondary parochial school.”⁵⁵ South Dakota provides a misdemeanor for the person who intentionally carries any firearm “on or in any elementary or secondary school premises, vehicle, or building or any premises, vehicle, or building used or leased for elementary or secondary school functions.”⁵⁶ West Virginia law provides that:

It is unlawful for a person to possess a firearm or other deadly weapon on a school bus . . . or in or on any public or private primary or secondary education building, structure, facility or grounds . . . or at any school-sponsored function.⁵⁷

In Maryland, “[a] person may not carry or possess a firearm, knife, or deadly weapon of any kind on public school property.”⁵⁸

2. Church Daycares and Church Pre-Schools

Many states’ weapon laws regulate churches that have day care centers, childcare centers, and preschools on or adjacent to their properties. Weapon statutes aimed at protecting such facilities effectively ban and/or regulate weapons in the churches that house these ministries. Alaska law provides that “[a] person commits the crime of misconduct involving weapons in the fifth degree if the person” knowingly possesses a firearm “within the grounds of or on a parking lot immediately adjacent to an entity, other than a private residence, *licensed as a child care facility* . . . for the care of children.”⁵⁹ District of Columbia law protects “[a]ll areas within[] 1000 feet of an appropriately identified public or private day care

53. N.D. CENT. CODE § 62.1-02-05(1) (West, Westlaw through 2013 Legis. Sess.).

54. *Id.*

55. 18 PA. CONS. STAT. § 912(B) (West, Westlaw through 2013-72 Legis. Sess.).

56. S.D. CODIFIED LAWS § 13-32-7 (West, Westlaw through 2013 Legis. Sess.).

57. W. VA. CODE ANN. § 61-7-11a(b)(1) (West, Westlaw through 2013 1st Extraordinary Sess.).

58. MD. CODE ANN., CRIM. LAW § 4-102(b) (West, Westlaw through 2013 Legis. Sess.).

59. ALASKA STAT. ANN. § 11.61.220(a)(4)(A) (West, Westlaw through 2013 Legis. Sess.) (emphasis added).

center” as gun free zones.⁶⁰ The new Illinois carry law enjoins concealed-carry in any “pre-school or child care facility, including any room or portion of a building under the control of a pre-school or child care facility.”⁶¹ The New Mexico carry law does not allow “a licensee . . . to carry . . . on the premises of a preschool.”⁶² Michigan’s carry law provides that “an individual licensed under this act to carry a concealed pistol . . . shall not carry a concealed pistol on the premises of . . . [a] public or private child care center or day care center, public or private child caring institution, or public or private child placing agency.”⁶³ A South Carolina concealed carry permit does not authorize concealed-carry in a “daycare facility or preschool facility.”⁶⁴

Having surveyed the state weapon laws that are aimed at the Church, this Article now surveys key aspects of the jurisdictional separation of Church and State, known as church autonomy.

III. THE HISTORICAL AND LEGAL BASIS FOR CHURCH AUTONOMY

A. *Why Address the Church’s Jurisdiction First?*

This Article addresses jurisdiction first, rather than the Constitution. The reasons are simple. Church government is distinct from civil government, and, thus, their respective *jurisdictions* are distinct. The Westminster Confession of Faith states, “The Lord Jesus, as King and Head of *His church*, hath therein appointed a government, in the hand of church officers, *distinct from the civil magistrate*.”⁶⁵ The fact that church government is distinct from the civil magistrate operates to limit the jurisdiction of the state or civil magistrate:

60. D.C. CODE § 22-4502.01(a) (West, Westlaw through Oct. 16, 2013).

61. Illinois General Assembly, HB0183, § 65(a)(2) (2013).

62. N.M. STAT. ANN. § 29-19-8(C) (West, Westlaw through 1st Sess. of 51st Legislature).

63. MICH. COMP. LAWS ANN. § 28.425o(1)(b) (West, Westlaw through 2013 Legis. Sess.). As applied to the Church, this section conflicts with subsection (e), which permits concealed-carry in church and on “[a]ny property or facility owned or operated by a . . . place of worship” if the presiding officials permit concealed-carry. MICH. COMP. LAWS ANN. § 28.425o(1)(e) (West, Westlaw through 2013 Legis. Sess.).

64. S.C. CODE ANN. § 23-31-215(M)(7) (West, Westlaw through 2013 Legis. Sess.). However, South Carolina allows concealed-carry in the Church upon “express permission is given by the appropriate church official or governing body. S.C. CODE ANN. § 23-31-215(9) (West, Westlaw through 2013 Legis. Sess.).

65. *Westminster Confession of Faith*, XXX(1) (Rev. ed. 1960) (emphasis added).

Civil magistrates may not assume to themselves the administration of the word and sacraments; or the power of the keys of the kingdom of heaven; or, in the least, interfere in matters of faith. . . . *And, as Jesus Christ hath appointed a regular government and discipline in his church, no law of any commonwealth should interfere with, let, or hinder, the due exercise thereof, among the voluntary members of any denomination of Christians, according to their own profession and belief. It is the duty of civil magistrates to protect the person and good name of all their people, in such an effectual manner as that no person be suffered, either upon pretense of religion or infidelity, to offer any indignity, violence, abuse, or injury to any other person whatsoever: and to take order, that all religious and ecclesiastical assemblies be held without molestation or disturbance.*⁶⁶

As the Church and State are distinct, the State's courts lack jurisdiction over the decisions of church government. If the courts lack jurisdiction over church government, the court has no authority to call into question the Church's decisions regarding church security and weapons possession in the sanctuary. This is so because no law of any commonwealth should interfere with the "due exercises" and "regular government" of the Church. The First Amendment to the United States Constitution recognizes that the Church has "an independence from secular control or manipulation, in short, power to decide for themselves, free from state interference, *matters of church government* as well as those of faith and doctrine."⁶⁷ Because of the Church's freedom in matters of faith, doctrine, and *the decisions of church government*, church autonomy is an affirmative defense the Church may raise with a motion to dismiss for lack of subject matter jurisdiction.⁶⁸ Thus,

66. *Id.* at XXIII(3) (emphasis added).

67. *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116 (1952) (emphasis added).

68. *Bryce v. Episcopal Church in the Diocese of Colorado*, 289 F.3d 648, 654 (10th Cir. 2002) ("St. Aidan's Church raised the church autonomy defense on a motion to dismiss for lack of subject matter jurisdiction. The motion would more appropriately be considered as a challenge to the sufficiency of plaintiff's claims under Rule 12(b)(6). If the church autonomy doctrine applies to the statements and materials on which plaintiffs have based their claims, then the plaintiffs have no claim for which relief may be granted. In this sense, the assertion that the First Amendment precludes the sexual harassment suit is similar to a government official's defense of qualified immunity, which is frequently asserted in a motion to dismiss under Rule 12(b)(6) or Rule 56.").

where state courts lack jurisdiction over issues regarding decisions of the government of the Church concerning church security and weapons in the church, a successful motion to dismiss for lack of jurisdiction precludes the court from addressing any substantive statutory and constitutional issues.

B. *The Bible and Church Autonomy: "It Appertaineth Not Unto Thee!"*

The jurisdictional separation of Church and State runs deep in the Western legal tradition. These roots are thoroughly biblical—and thus, this Article focuses first on the Bible.⁶⁹ The jurisdictional separation of Church and State grew and flourished in the ancient Hebrew republic, which separated the civil duties of the judges and elders from the religious duties of the priests and Levites.⁷⁰ The Hebrew republic also separated the civil jurisdiction of the kings from the religious jurisdiction of the priests and Levites.⁷¹

Kings such as Saul and Uzziah who transgressed the jurisdictional boundary between Church and State under biblical law were severely sanctioned for their usurpation.⁷² The priests who withstood King Uzziah bravely spoke these words that memorialize the jurisdictional separation of Church and State: "And they withstood Uzziah the king, and said unto him, *It appertaineth not unto thee, Uzziah, to burn incense unto the LORD, but to the priests the sons of Aaron, that are consecrated to burn incense: go out of the sanctuary; for thou hast trespassed, neither shall it be for thine honor from the LORD God.*"⁷³ King Ahab and Queen Jezebel of the Northern Kingdom of Israel also flagrantly departed from the separation of Church

69. A complete survey of the development of this doctrine is beyond the scope of this Article, and has been covered amply by others. See generally, Robert J. Renaud & Lael D. Weinberger, *Spheres of Sovereignty: Church Autonomy Doctrine and the Theological Heritage of the Separation of Church and State*, 35 N. KY. L. REV. 67, 69–84 (2008); RENAUD & WEINBERGER, *A TALE OF TWO GOVERNMENTS: CHURCH DISCIPLINE, THE COURTS, AND THE SEPARATION OF CHURCH AND STATE* (2012). See also *Ex parte G.C.*, 924 So. 2d 651, 674–77 (Ala. 2005) (Parker, J., dissenting); *Yates v. El Bethel Primitive Baptist Church*, 847 So. 2d 331, 349–58 (Ala. 2002) (Moore, C.J., dissenting). See generally, Hon. Roy S. Moore, *Religion in the Public Square*, 29 CUMB. L. REV. 347 (1999).

70. *Exodus* 18:13–26 (elders/judges); *Deuteronomy* 16:18–22 (judges); *Exodus* 28:1 (priests). See also Benjamin S. Walton, *The Authoritativeness and Usefulness of the Principles of God's Old Covenant Law for the New Covenant Church and State*, 5 LIBERTY U.L. REV. 419, 454–58 (2011).

71. *Deuteronomy* 17:14–20 (kings); *Deuteronomy* 18:1–8 (Levites).

72. *1 Samuel* 13:9–14 (King Saul); *2 Chronicles* 26:16–21 (King Uzziah).

73. *2 Chronicles* 26:18 (King James).

and State required by God's law.⁷⁴ Ahab and Jezebel unified the State and Church through pagan Baal worship, for the prophets of Baal were ministers of state, supported by Jezebel, rather than ministers of an independent jurisdiction.⁷⁵

Jesus Christ later enforced this jurisdictional separation when He taught that His disciples should "[r]ender therefore unto Caesar the things which are Caesar's; and unto God the things which are God's."⁷⁶ During the Roman era, the Apostles confirmed the separate jurisdiction of Christ's church from the state, a doctrine that "turned the world upside down,"⁷⁷ for the apostles "all do contrary to the decrees of Caesar, saying that there is another king, one Jesus."⁷⁸ Nonetheless, the Apostles taught and encouraged submission to the ruling civil authorities,⁷⁹ while affirming the jurisdictional separation of Church and State. The Apostles taught and maintained that in certain areas "[w]e ought to obey God rather than men."⁸⁰

From these biblical foundations, the jurisdictional separation of the Church, or the religious realm, from the State passed from the bosom of the early Church into the Common Law well before the Magna Carta and much later into the colonial American landscape.⁸¹ Significantly, the first Article of the Magna Carta confirmed the jurisdictional separation of Church and State, "the church of England is to be free,"⁸² enshrining the biblical principle that there are certain things that "appertaineth not unto" the civil magistrate.

C. *The Founding Fathers: James Madison and Thomas Jefferson*

The jurisdictional separation of Church and State in the United States has been memorialized by the writings of James Madison and Thomas

74. 1 *Kings* 16:29–33 (King James).

75. 1 *Kings* 18:19 (King James) ("the prophets of Baal four hundred and fifty, and the prophets of the groves four hundred, which eat at Jezebel's table").

76. *Matthew* 22:21 (King James).

77. *Acts* 17:6 (King James).

78. *Acts* 17:7 (King James).

79. 1 *Peter* 2:13–17; 1 *Timothy* 2:1–3.

80. *Acts* 5:29 (King James).

81. *See generally*, Renaud & Weinberger, *supra* note 69, at 72–83.

82. *See, Magna Carta* at § 1 (1215), available at www.archives.gov/exhibits/featured_documents/magna_carta/translation.html ("In the first place we grant to God and confirm by this our present charter for ourselves and our heirs in perpetuity that the English Church is to be free and to have all its rights fully and its liberties entirely.").

Jefferson. Madison's *Memorial and Remonstrance*,⁸³ addressed to the General Assembly of Virginia, clearly advocated the jurisdictional separation of Church and State. Madison wrote:

We maintain therefore that in matters of Religion, no man's right is abridged by the institution of Civil Society and that Religion is wholly exempt from its cognizance. . . .

Because Religion be exempt from the authority of the Society at large, still less can it be subject to that of the Legislative Body. The latter are but the creatures and viceregents of the former. Their jurisdiction is both derivative and limited: it is limited with regard to the co-ordinate departments, more necessarily is it limited with regard to the constituents.⁸⁴

And further:

The preservation of a free Government requires not merely, that the metes and bounds which separate each department of power be invariably maintained; but more especially that neither of them be suffered to overleap the great Barrier which defends the rights of the people. The Rulers who are guilty of such an encroachment, exceed the commission from which they derive their authority, and are Tyrants. The People who submit to it are governed by laws made neither by themselves nor by an authority derived from them, and are slaves.

[We remonstrate b]ecause it is proper to take alarm at the first experiment on our liberties.⁸⁵

Thus, Madison held that religion was "wholly exempt" from the "cognizance" or *jurisdiction* of the State; religion is not subject to the legislative body of the State; religion is a "separate department of power;" and thus only tyrants would overleap the jurisdictional barriers, the "metes and bounds" that separate the Church or religion from the State.

Thomas Jefferson, the author of the Virginia Statute for Religious Freedom, wrote,

83. James Madison, *A Memorial and Remonstrance to the General Assembly of Virginia* (1785) in GARY AMOS & RICHARD GARDINER, *NEVER BEFORE IN HISTORY: AMERICA'S INSPIRED BIRTH 167-70* (2011).

84. *Id.* at 167-68.

85. *Id.* at 168.

“Well aware: that Almighty God has created the mind free; that all attempts to influence it by temporal punishments or burdens or by civil incapacitations, tend only to . . . [produce] habits of hypocrisy and meanness

. . . .

. . . no man shall . . . otherwise suffer on account of his religious opinions or belief; but that all men shall be free to profess . . . their opinion in matters of religion, and that the same shall in no wise diminish, enlarge, or affect their civil capacities.”⁸⁶

Thomas Jefferson’s language has been echoed through the years in some state constitutions. Rhode Island’s Constitution provides that:

[N]o person shall be compelled to frequent or to support any religious worship, place, or ministry whatever, except in fulfillment of such person’s voluntary contract; nor enforced, restrained, molested, or burdened in body or goods; nor disqualified from holding any office; nor otherwise suffer on account of such person’s religious belief; and that every person shall be free to worship God according to the dictates of such person’s conscience, and to profess and by argument to maintain such person’s opinion in matters of religion; and that the same shall in no wise diminish, enlarge, or affect the civil capacity of any person.⁸⁷

Alabama’s Declaration of Rights provides “that the civil rights, privileges, and capacities of any citizen shall not be in any manner affected by his religious principles.”⁸⁸ South Dakota: “No person shall be denied any civil or political right, privilege or position on account of his religious opinions.”⁸⁹ Illinois: “[N]o person shall be denied any civil or political right, privilege or capacity, on account of his religious opinions.”⁹⁰ Iowa: “[N]o

86. *Id.* at 159–160 (quoting Thomas Jefferson, *Virginia Statute for Religious Freedom* (1786)).

87. R.I. CONST. art. I, § 3.

88. ALA. CONST. art. I, § 3.

89. S.D. CONST. art 6, § 3. Section 3 continues, “but the liberty of conscience hereby secured shall not be so construed as to excuse licentiousness, the invasion of the rights of others, or justify practices inconsistent with the peace or safety of the state.” *Id.*

90. ILL. CONST. art. I, § 3. Much like South Dakota’s provision *supra*, Illinois’s provision continues: “but the liberty of conscience hereby secured shall not be construed to dispense

person shall be deprived of any of his rights, privileges, or capacities . . . in consequence of his opinions on the subject of religion.”⁹¹ Idaho: “The exercise and enjoyment of religious faith and worship shall forever be guaranteed; and no person shall be denied any civil or political right, privilege, or capacity on account of his religious opinions.”⁹² Michigan: “The civil and political rights, privileges and capacities of no person shall be diminished or enlarged on account of his religious belief.”⁹³

Justice Tom Parker of the Alabama Supreme Court summarized the general perspective of the Founding Era: “[O]ur Founders thought in terms of a plurality of governments-including individual government and the covenantal governments of the family, the state, and the church-and not of state government alone. Each of these governments possesses its own exclusive jurisdiction of authority, constituting the original ‘separation of powers.’”⁹⁴ Further,

[T]he separation of powers *among* the spheres of governments is of a higher order and greater significance than the separation of powers *within* a particular sphere of government, as in the state government’s division into executive, legislative, and judicial branches. Consequently, courts must recognize and uphold the separation of powers among the various government spheres even more diligently than they already recognize and uphold the separation of powers within the state sphere of government.⁹⁵

Likewise, the Texas Supreme Court concisely defined the jurisdictional separation of church and stated: “At its core, the First Amendment recognizes two spheres of sovereignty when deciding matters of government and religion. The religion clauses are designed to ‘prevent, as far as possible, the intrusion of either [religion or government] into the precincts of the other.’”⁹⁶ Justice Parker observed, “In modern times . . . the governing jurisdiction that most often exceeds its proper authority by

with oaths or affirmations, excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of the State.”

91. IOWA CONST. art. I, § 4.

92. IDAHO CONST. art. I, § 4.

93. MICH. CONST. art. I, § 4.

94. *Ex parte G.C.*, 924 So. 2d 651, 675 (Ala. 2005) (Parker, J., dissenting).

95. *Id.*

96. *C.L. Westbrook, Jr. v. Penley*, 231 S.W.3d 389, 395 (Tex. 2007) (alteration in original) (quoting *Lemon v. Kurtzman*, 403 U.S. 602, 614 (1971)).

usurpation is not the individual, the family, or the church, but the state. . . . [W]e live in an age in which such usurpation is so widespread that it has come to be commonly tolerated."⁹⁷

D. *The United States Supreme Court on Church Autonomy*

Even though the State is the governing authority that most often usurps its jurisdictional limits, the Supreme Court of the United States has acknowledged the jurisdictional separation of Church and State for over 140 years. In the 1871 case *Watson v. Jones*,⁹⁸ the Supreme Court stated:

[T]he rule of action which should govern the civil courts, founded in a broad and sound view of the relations of church and state under our system of laws . . . is, that, whenever the questions of discipline, or of faith, or ecclesiastical rule, custom, or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them.⁹⁹

The *Watson* court explained further:

In this country the full and free right to entertain any religious belief, to practice any religious principle, and to teach any religious doctrine which does not violate the laws of morality and property, and which does not infringe personal rights, is conceded to all. The law knows no heresy, and is committed to the support of no dogma, the establishment of no sect. The right to organize voluntary religious associations to assist in the expression and dissemination of any religious doctrine, and to create tribunals for the decision of controverted questions of faith within the association, and *for the ecclesiastical government of all the individual members, congregations, and officers within the general association, is unquestioned.*¹⁰⁰

97. *Ex parte G.C.*, 924 So. 2d at 677.

98. *Watson v. Jones*, 80 U.S. 679 (1871).

99. *Id.* at 727.

100. *Id.* at 728–729 (emphasis added). “Each of these large and influential bodies (to mention no others, let reference be had to the Protestant Episcopal, the Methodist Episcopal, and the Presbyterian churches), has a body of constitutional and ecclesiastical law of its own, to be found in their written organic laws, their books of discipline, in their collections of

In 1952, the Supreme Court cited the *Watson* case and reasoned that “[t]he opinion radiates . . . a spirit of freedom for religious organizations, an independence from secular control or manipulation, in short, power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine.”¹⁰¹ In 1976, the Supreme Court explained that, “[i]n short, the First and Fourteenth Amendments permit hierarchical religious organizations to establish their own rules and regulations for internal discipline and government, and to create tribunals for adjudicating disputes over these matters.”¹⁰²

In the 2012 *Hosanna-Tabor* decision, the Supreme Court repeated, “the First Amendment ‘permit[s] hierarchical religious organizations to establish their own rules and regulations for internal discipline and government, and to create tribunals for adjudicating disputes over these matters.’”¹⁰³ Justice Thomas concurred in *Hosanna-Tabor* and enumerated the dangers that the First Amendment protects the Church against:

[I]t is a significant burden on a religious organization to require it, on pain of substantial liability, to predict which of its activities a secular court will consider religious. The line is hardly a bright one, and an organization might understandably be concerned that a judge would not understand its religious tenets and sense of mission. Fear of potential liability might affect the way an organization carried out what it understood to be its religious mission.¹⁰⁴

Justice Alito’s concurring opinion in *Hosanna-Tabor* explained the potent effects of church autonomy:

precedents, in their usage and customs, which as to each constitute a system of ecclesiastical law and religious faith that tasks the ablest minds to become familiar with. It is not to be supposed that the judges of the civil courts can be as competent in the ecclesiastical law and religious faith of all these bodies as the ablest men in each are in reference to their own.” *Id.* at 729.

101. *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116 (1952).

102. *Serbian Eastern Orthodox Diocese for United States of America and Canada v. Milivojevich*, 426 U.S. 696, 724 (1976).

103. *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, 132 S. Ct. 694, 705 (2012).

104. *Id.* at 711 (Thomas, J., concurring) (citing *Corp. of the Presiding Bishop of the Church of Latter-Day Saints v. Amos*, 483 U.S. 327, 336 (1987)).

Throughout our Nation's history, religious bodies have been the preeminent example of private associations that have "act[ed] as critical buffers between the individual and the power of the State." . . . [I]t is easy to forget that the autonomy of religious groups, both here in the United States and abroad, has often served as a shield against oppressive civil laws. To safeguard this crucial autonomy, we have long recognized that the Religion Clauses protect a private sphere within which religious bodies are free to govern themselves in accordance with their own beliefs. The Constitution guarantees religious bodies "independence from secular control or manipulation—in short, power to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine."¹⁰⁵

One key way the Church has served as a shield against the State's oppressive laws throughout history is through the privilege of sanctuary, which is an aspect of church autonomy.

IV. THE KEY LOCATION OF CHURCH AUTONOMY: THE SANCTUARY

A. *The Purpose of the Privilege of Sanctuary: A Check on the State*

Sanctuary is based on the doctrine of church autonomy. Sanctuary is "an assertion of an independent right, premised on natural and divine power, to prevent imminent harm to whomever the Church chooses to grant protection. The Church confronted the State when it was either unwilling or unable to control the administration of criminal justice."¹⁰⁶ A sanctuary is "a consecrated place giving protection to those fleeing from justice or persecution; or, the privilege of taking refuge in such consecrated place."¹⁰⁷

Former professor and scholar Michael Feeley has argued that "three elements—person, place, [and] government check—constitute the heart of the concept of sanctuary."¹⁰⁸ The first element is "[t]he representatives and

105. *Id.* at 712 (Alito, J., concurring) (citing *Roberta v. United States Jaycees*, 468 U.S. 609, 619 (1984); *Kedroff*, 344 U.S. at 116).

106. Michael Scott Feeley, *Towards the Cathedral: Ancient Sanctuary Represented in the American Context*, 27 SAN DIEGO L. REV. 801, 810 (1990) (emphasis added).

107. 13 George C. Alston, *Sanctuary*, THE CATHOLIC ENCYCLOPEDIA (1912), available at <http://www.newadvent.org/cathen/13430a.htm>.

108. Feeley, *supra* note 106, at 802.

ministers of God and His Church [who] kept the sanctuary. They shielded those who sought protection based on an inherent and supernatural right to do so.”¹⁰⁹ The second is “[t]he site of sanctuary [which] was dedicated to the divine[.]”¹¹⁰ The third element, government check, meant that “Church sanctuary stood independent of the State and defined the limit of earthly vengeance.”¹¹¹ To Feeley’s three elements, a fourth element must be added: *law*. The rule of law is of central importance to the privilege of sanctuary:

Through its sanctuary power, the Church not only forced the pursuers to halt their pursuit, preventing summary retaliation against the accused, but also called the State to observe *just procedures* in adjudicating alleged wrongdoers. Thus, Church sanctuary served as a check on violence, a reproach and aid to a State striving to establish *the rule of law*, and a stimulus to *due process and fair adjudication*.¹¹²

Thus, the required elements of sanctuary are that the (1) *representative of the Church* guards the (2) *place of the sanctuary* as a (3) *government check*, based upon (4) *the rule of law*. However, sanctuary is not based on the rule of law, abstractly considered. It is the rule of *God’s law* that is essential to any concept of sanctuary, for God’s law gives the Church the independent jurisdiction and higher authority to check the power of the State.

The late R.J. Rushdoony, a theologian and expert on Church-State issues, makes this connection clear:

The church was a sanctuary, not merely because of its continuity with Israel, *but because it represented God’s law, God’s justice on earth*. Today, the modern state is an increasingly oppressive tyranny. Only as the church becomes the voice of God’s law and a sanctuary against injustice can the power of the current tyranny be broken.¹¹³

Under biblical law, however, the privilege of sanctuary was not limited to just a sacred place or consecrated site, as Feeley’s second element indicates. The privilege was also tied to common places called the cities of refuge,

109. *Id.*

110. *Id.*

111. *Id.*

112. *Id.* at 802–03 (emphasis added).

113. ROUSAS JOHN RUSHDOONY, *CHRISTIANITY AND THE STATE* 61 (1986) (emphasis added).

whose elders and congregational assemblies provided sanctuary and administered justice through the laws of God.

B. *Sanctuary in Biblical Law: A Check on the State and the Family*

The independent right or privilege of sanctuary has origins in biblical law, even though Blackstone traced the privilege of sanctuary to “the superstitious veneration . . . paid to consecrated ground in the times of popery.”¹¹⁴ The Catholic Encyclopedia essentially agreed with Blackstone: “The right of sanctuary was based on the inviolability attaching to things sacred; and not, as some have held, on the example set by the Hebrew cities of refuge.”¹¹⁵ While Pope Leo I, who served from 440–461,¹¹⁶ gave papal sanction to the privilege of sanctuary,¹¹⁷ the papacy did not invent sanctuary. Indeed, religious sanctuary originated with the biblical cities of refuge. “[I]t is clear that the asylum [or sanctuary] granted was religious; it was tied to the life and death of the high priest, and it was related to the altar.”¹¹⁸

Biblical law provided two types of religious sanctuary: the six cities of refuge¹¹⁹ and the altar of sacrifice, which was located first in the tabernacle and later the temple.¹²⁰ At first glance, it appears that Biblical law established a *civil* sanctuary in the six cities of refuge and an ecclesiastical or *religious* sanctuary at the altar of sacrifice. However, aside from the separate *locations*, the cities of refuge and the altar were both thoroughly religious

114. 4 WILLIAM BLACKSTONE, COMMENTARIES *332.

115. Alston, *supra* note 107. Alston did not support his assertion that the biblical cities of refuge were not concerned with “the inviolability attaching to things sacred.”

116. 9 Johann Peter Kirsch, *Pope St. Leo I (the Great)*, THE CATHOLIC ENCYCLOPEDIA (1912), available at <http://www.newadvent.org/cathen/09154b.htm>.

117. See Jorge L. Carro, *Sanctuary: The Resurgence of an Age-Old Right or a Dangerous Misinterpretation of an Abandoned Ancient Privilege?*, 54 U. CIN. L. REV. 747, 753 (1986) (“The Church, through Leo I, confirmed the Code of Theodosius the Younger, adding the provision that the church’s representative examine those seeking asylum and take action on the evidence produced.”)

118. RUSHDOONY, *supra* note 113, at 58. See *Numbers* 35:28 (“Because he should have remained in the city of his refuge until the death of the high priest: but after the death of the high priest the slayer shall return into the land of his possession.”); *Exodus* 21:14, (“But if a man come presumptuously upon his neighbour, to slay him with guile; thou shalt take him from mine altar, that he may die.”).

119. *Numbers* 35:9–34.

120. *Exodus* 21:12–14.

sanctuaries. Biblical scholar Matthew Henry offered this explanation of the religious aspect of sanctuary of the cities of refuge:

They are said to *sanctify* these cities, that is the original word for *appointed*, [Joshua 20:7]. Not that any ceremony was used to signify the consecration of them, only they did by a public act of court solemnly declare them cities of refuge, and as such sacred to the honour of God, as the protector of exposed innocence. If they were sanctuaries, it was proper to say they were *sanctified*.¹²¹

The sanctuary of the cities of refuge was administered by the elders¹²² and congregational assembly of each designated city.¹²³ However, the cities of refuge were all Levitical cities¹²⁴—that is, they were assigned to the tribe of Levi, the priests. Matthew Henry opined that this made the Levites “judges in those cases” and “protectors to oppressed innocence.”¹²⁵ The sanctuary of the altar was administered by the priests who ministered at the altar, who were also of the priestly tribe of Levi.¹²⁶ Both types of sanctuary were regulated by God’s law regarding murder and capital punishment.¹²⁷ Moreover, sanctuary “applied only to the man involved in an accidental death in which he had no guilt.”¹²⁸ The duration of the privilege of sanctuary in the cities of refuge for manslayers was tied to the death of the high priest, which was a type of religious redemption or satisfaction for bloodshed.¹²⁹

121. MATTHEW HENRY, COMMENTARIES ON THE WHOLE BIBLE, Joshua 20:7–9 (1706), available at <http://www.biblestudytools.com/commentaries/matthew-henry-complete/joshua/20.html>.

122. Joshua 20:4 (King James) (“And when he that doth flee unto one of those cities shall stand at the entering of the gate of the city, and shall declare his cause in the ears of the elders of that city, they shall take him into the city unto them, and give him a place, that he may dwell among them.”).

123. Joshua 20:2–6; Numbers 35:24–25.

124. See generally, Joshua 20:1–9 (appointing cities of refuge); see also Joshua 21:32, Kedesh; Joshua 21:21, Shechem; Joshua 21:13, Hebron; Joshua 20:8, Bezer; Joshua 21: 36; Joshua 21:38, Ramoth; Joshua 21:27, Golan.

125. Henry, *supra* note 121, at Joshua 20:7–9.

126. RUSHDOONY, *supra* note 113, at 61.

127. Numbers 35:24 (King James) (“Then the congregation shall judge between the slayer and the revenger of blood according to these judgments.”).

128. RUSHDOONY, *supra* note 113, at 58.

129. Numbers 35:25 (King James) (“and he shall abide in it unto the death of the high priest, which was anointed with the holy oil”). See also, MATTHEW HENRY, COMMENTARY ON THE WHOLE BIBLE, Numbers 35 (1706), available at <http://www.biblestudytools.com/commentaries/matthew-henry-complete/numbers/35.html> (“The cities of refuge being all of

The sanctuary afforded in the cities of refuge and at the altar served complimentary purposes. The laws of God provided the cities of refuge to protect manslaughterers from the vengeance of *family members*, the “avengers of blood.”¹³⁰ Thus, the cities of refuge were a check on the family and the family’s vigilante justice,¹³¹ for biblical law denies to the family the power of capital punishment.¹³² King David extended some type of sanctuary protection to Abner, King Saul’s former general, in the city of Hebron, which was King David’s first capital and also a city of refuge in the tribal lands of Judah.¹³³ However, Joab, David’s general, grossly violated biblical law pertaining to the city of refuge and killed Abner in the gates of Hebron, thus avenging the blood and death of his brother Asahel, whom Abner killed lawfully in battle.¹³⁴

In contrast to the purpose of the cities of refuge, the biblical examples in which manslaughterers and murderers took refuge at the altar of sacrifice appear to have served as checks upon the power of the king, the chief magistrate.¹³⁵ The priests ensured that murderers would be taken from the altar to the place of execution. After King Joash’s coronation, the high priest Jehoida specifically denied any protection at the altar for Athaliah, the queen mother, due to her slaughter of the royal family.¹³⁶ Thus, in practice, the two types of biblical sanctuaries separated and limited the independent

them Levites’ cities, and the high priest being the head of that tribe, and consequently having a peculiar dominion over these cities, those that were confined to them might properly be looked upon as his prisoners, and so his death must be their discharge; it was, as it were, at his suit that the delinquent was imprisoned, and therefore at his death it fell. *Actio moriturum cum persona—The suit expires with the party.* Anisworth has another notion of it, That as the high priests, while they lived, by their service and sacrificing made atonement for sin, wherein they prefigured Christ’s satisfaction, so, at their death, those were released that had been exiled for casual murder, which typified redemption in Israel.”).

130. *Numbers* 35:9–34.

131. *Numbers* 35:24–27.

132. *Genesis* 4:14–15; *Deuteronomy* 21:18–21.

133. *2 Samuel* 3:19–22, see *Joshua* 21:13.

134. *2 Samuel* 3:26–39.

135. *Exodus* 21:12–14; but see *I Kings* 2:28–29 (finding no protection for murderers); *I Kings* 1:49–51 (finding protection if a repentant traitor behaved worthily); see also, *I Kings* 2:36–46 (establishing boundaries for civil sanctuary).

136. *2 Kings* 11:15–16 (King James) (“But Jehoiada the priest commanded the captains of the hundreds, the officers of the host, and said unto them, Have her forth without the ranges: and him that followeth her kill with the sword. For the priest had said, *Let her not be slain in the house of the Lord.* And they laid hands on her; and she went by the way by the which the horses came into the king’s house: and there was she slain.” (emphasis added)).

jurisdictions of the family, the Church or religious order, and the State. The early Church then took these models from the laws of God and served as a city of refuge through its early sanctuary laws. The privilege of sanctuary then passed into Roman law through the Code of Theodosius in 399 and later through the Justinian Code.¹³⁷ These Roman laws and biblical laws and served as a precedent for the privilege of sanctuary in the English common law and also later ecclesiastical law.

C. *The Privilege of Sanctuary and the Common Law*

King Aethelbert's dooms contain the earliest mention of sanctuary or "church-frith" in England around the year 600.¹³⁸ Aethelbert's dooms provided fines or restitution for violation of church-frith, which is defined variously as "a special protection under ecclesiastical auspices," or church-peace.¹³⁹ In the late 800's, the dooms of King Alfred the Great provided the privilege of sanctuary in any church or monastery for any crime, for up to seven days.¹⁴⁰ In England, the right of asylum was originally confined to just church buildings. In time, the privilege sanctuary was extended to the church grounds, and at times to even larger areas.¹⁴¹ Some sanctuaries extended protection in a radius of one mile from the church building; the outer limits of the sanctuary were marked by sanctuary crosses.¹⁴² At common law, there were two types of sanctuary—church sanctuary and sanctuaries chartered by the king.¹⁴³ These sanctuary laws existed in one form or another for over 1,000 years in England.¹⁴⁴

137. Alston, *supra* note 107.

138. MEDIEVAL SOURCEBOOK: THE ANGLO-SAXON DOOMS, 560–975, available at <http://www.fordham.edu/Halsall/source/560-975dooms.asp#The Laws of Æthelberht> (citing OLIVER J. THATCHER, IV THE LIBRARY OF ORIGINAL SOURCES 211–239 (1901)); see also RUSHDOONY, *supra* note 113, at 60 ("[W]here, as early as King Ethelbert in 600 A.D.[.] sanctuary was recognized.").

139. *Id.* See also Carro, *supra* note 117, at 753 ("the penalty for disturbing church peace was double that of an ordinary breach of the king's peace.").

140. MEDIEVAL SOURCEBOOK: THE ANGLO-SAXON DOOMS, *supra* note 138.

141. Alston, *supra* note 107.

142. *Id.*

143. Carro, *supra* note 117, at 754.

144. See *id.* at 753 (Ethelbert's dooms); *id.* at 766 (King James I abolishes sanctuary).

Blackstone noted that “[a]nd now . . . all privilege of sanctuary . . . is utterly taken away and abolished.”¹⁴⁵ Feeley observed that, “[a]s the years passed and centralized governmental control increased, Church and State clashed over control of sanctuaries and the scope of ecclesiastic power. Church and State bitterly disputed from which authority the right of sanctuary of a given place derived.”¹⁴⁶ As a side effect of Henry VIII’s divorce from Rome, the privilege of sanctuary commenced a fairly rapid decline during the post-Reformation era.¹⁴⁷ Henry VIII limited the privilege of sanctuary for repeat offenders; for those accused of high treason; for murderers, rapists, burglars, highway robbers, arsonists; and those guilty of sacrilege.¹⁴⁸ Moreover, Henry VIII’s statutes required all sanctuary persons to wear badges, *prohibited them from carrying weapons*, and kept them under curfew while upon sanctuary grounds.¹⁴⁹

James I abolished town sanctuaries in 1603 and abolished the last general church sanctuary in 1623.¹⁵⁰ Whitefriars in London was the last English sanctuary and was abolished by act of Parliament in 1697.¹⁵¹ In continental Europe, the privilege of sanctuary lasted until the eighteenth century.¹⁵² In Scotland, “sanctuary was abolished at the Reformation, with one exception. Debtors could take refuge at Holyrood House and its precincts” for a limited time.¹⁵³ This conditional asylum continued through the nineteenth century.¹⁵⁴ The State’s abolition of the privilege of sanctuary is also reflected in the Canon Law. Professor Jorge Carro noted that “[t]he 1983 Code [of Canon Law] dropped its previous statement that ‘[a] church enjoys the right of asylum so that weak criminals who flee to it are not to be removed from

145. 4 WILLIAM BLACKSTONE, COMMENTARIES *333. (“And now, by the statute 21 Jac. I. c. 28. all privilege of fanduary, and abjuration confequent thereupon, is utterly taken away and abolifhed.”).

146. Feeley, *supra* note 106, at 810.

147. Carro, *supra* note 117, at 766.

148. *Id.*

149. *Id.*

150. *Id.*

151. Alston, *supra* note 107.

152. *Id.*

153. RUSHDOONY, *supra* note 113, at 60 (citing R.S. Peale, *Sanctuary*, XXI ENCYCLOPEDIA BRITANNICA 255 (1891)).

154. *Id.*

it, except in case of necessity, without the assent of the ordinary or the rector of the church.”¹⁵⁵

Thus, because the State abolished the privilege of sanctuary, “the modern state is an increasingly oppressive tyranny. Only as the church becomes the voice of God’s law and a sanctuary against injustice can the power of the current tyranny be broken. *There are now no cities of refuge.*”¹⁵⁶ Indeed, men now have no refuge from the State’s lawlessness and the vigilante justice of the family, for the Church’s power to serve as a government check and the voice of God’s law has been severely limited by the State.

D. *The Rise of Statist Sanctuaries: A Check on the Church*

The concept of sanctuary, however, has not been abolished. The concept and ideals endure in one form or another. Though colonial America did not recognize the right of sanctuary, Feeley noted that the founding of the New World embodied the concept and ideals of sanctuary, for early colonists “often viewed their piece of North America as promised land, as the new Israel, as sanctuary from their persecutors.”¹⁵⁷ Thus, the question is not whether there will be sanctuary; but which type of sanctuary will there be, for “[n]ames change not the nature of things.”¹⁵⁸ The privilege of sanctuary is inescapable: Humanity has always valued special, sacred places and created specific legal and spiritual protections for those places.

Today, sanctuary endures almost exclusively as a statist privilege. Like the royal grants of sanctuary long ago, the modern State either creates or controls virtually all sanctuaries.¹⁵⁹ The privilege of sanctuary is thus alive and well, but as a statist privilege; it consists at least in part of “laws forbidding the carrying of firearms in *sensitive places* such as schools and government buildings.”¹⁶⁰ Justice Scalia made it clear that “nothing in our [*Heller*] opinion should . . . cast doubt on longstanding prohibitions of

155. Carro, *supra* note 117, at 767 (quoting Hennesey, *Right of Sanctuary—Then and Now, in AMERICA* 482 (1971)).

156. RUSHDOONY, *supra* note 113, at 61 (emphasis added).

157. Feeley, *supra* note 106, at 811.

158. David Jones, *Defensive War in a Just Cause Sinless* (1775), reprinted in *THE THEOLOGY OF CHRISTIAN RESISTANCE: CHRISTIANITY AND CIVILIZATION*, 218–32, 225 (1983).

159. King Solomon recognized, “there is no new thing under the sun. Is there any thing whereof it may be said, See, this is new? It hath been already of old time, which was before us.” *Ecclesiastes* 1:9–10 (King James).

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

firearms in such sensitive places.”¹⁶¹ With such weapon laws aimed at the Church, the State implicitly denies that the Church has an independent right and jurisdiction to control the sanctuaries of the Church.

Feeley recognized, “If the State grants the privilege of sanctuary, it can also regulate and revoke it. However, if the sanctuary privilege flows from the *independent and separate power of the Church*, the State may not control it.”¹⁶² Sanctuary exists today, and, as in the past, sanctuary is “the peace and protection of the central authority . . . granted by the [state] to specially favored places.”¹⁶³ Sanctuary exists today, “extended by the power of the State to those places favored by the [state].”¹⁶⁴ Like royal chartered sanctuaries long ago, the State’s modern “sanctuaries [are] often churches or religious establishments.”¹⁶⁵ Statutes forbidding firearms in the Church contain the three elements Feeley suggested govern ecclesiastical sanctuary: *person*, *place*, and *government check*. However, the elements are inverted and reflect the State’s prerogatives. The *person* is the minister of the State, confronting the representative of the Church and, at least in theory, confronting lawless criminals who target the Church. The *place* is a church sanctuary defined, not by the Church’s authority but by the State, as a “sensitive area.” The *government check* refers in part to the State’s check upon lawless criminals, but also functions as the State’s check upon the Church’s jurisdiction. The similarities between both ecclesiastical sanctuary and royal chartered sanctuary on one hand and modern “sensitive place” weapon laws on the other are striking.¹⁶⁶ These weapon laws mean that “sensitive places,” much like ecclesiastical sanctuaries, may not be profaned by the use of force, let alone the peaceful carrying of weapons for self-defense. In the District of Columbia, if a person illegally carries a weapon in a gun-free zone, both the applicable fine and/or prison term may be doubled,¹⁶⁷ much like King Aethelbert’s double penalty for violating the “Church-Frith” 1,400 years ago.¹⁶⁸ In the United States, as in some of the old

161. *Id.*

162. Feeley, *supra* note 106, at 810 (emphasis added).

163. Carro, *supra* note 117, at 754.

164. *See* Feeley, *supra* note 106, at 809.

165. *Id.*

166. Modern “sensitive places” weapons laws are not trivial matters, but result in the disarmament of the Church, which is a serious matter indeed.

167. D.C. STAT. ANN. § 22-4502.01(b) (West, Westlaw through Oct. 16, 2013).

168. Carro, *supra* note 117, at 753 (“[T]he penalty for disturbing church peace was double that of an ordinary breach of the king’s peace.”).

English sanctuaries, the “privilege of sanctuary” extends in a radius up to 1,000 feet around certain “sensitive areas.”¹⁶⁹ The only external feature that has changed is that the signs denoting areas as “gun-free school zones” have replaced the old sanctuary crosses that marked the limits of the sanctuary. Indeed, King Henry VIII’s statutory limitations on sanctuaries bear striking similarities to laws regulating “sensitive areas.”¹⁷⁰ Concealed/carry licensees must, as “sanctuary persons” in “sensitive areas,” “wear badges,” also known as concealed-carry licenses, and be “prohibited . . . from carrying weapons” in certain areas, known as “sensitive areas.”¹⁷¹

Thus, the State abolished ecclesiastical sanctuary years ago, only to replace the Church’s sanctuary with statist sanctuaries, called “sensitive places.” The State’s “sensitive place” weapon laws are problematic on at least three levels. First, these laws are a usurpation of the jurisdiction of the Church. The Church inherited the biblical duty to serve as a city of refuge, a sanctuary against both the State’s lawlessness and personal vengeance. After stripping the Church of its ancient sanctuaries, the State has no jurisdiction to create sanctuaries on behalf of the Church. Many aspects of the privilege of sanctuary should be revived by the Church, not usurped by the State. Second, the State does not do the greatest job of providing true sanctuary. Statistically, the State’s “sensitive places” have provided only limited protection; the amount of violent incidents in the Church and other religious locations has risen noticeably since 1999, and risen sharply since 2004.¹⁷² Legally, weapon laws defining the Church as a “sensitive area” offer only tenuous sanctuary. What the State grants, it can also revoke: “If the State grants the privilege of sanctuary, it can also regulate and revoke it.”¹⁷³ In contrast, if the privilege flows from the Church’s independent jurisdiction, the State may not eliminate it. Third, the State’s “sensitive places” cannot serve as a true *government check*, for the State, without reference to God’s higher law, has no self-limiting or self-checking principle to check its own power. The State’s sanctuaries do not check its own power but consolidate power, unless checked by the Church and the family. “Sensitive place” weapon laws truly invert the ideals of the privilege of

169. D.C. STAT. ANN. § 22-4502.01(a)–(b); 11 Del. Code Ann. § 1457 (c)(1) (West 2012).

170. Carro, *supra* note 117, at 766.

171. *Id.*

172. Carl Chinn, *Ministry Violence Statistics*, available at http://www.carlchinn.com/Church_Security_Concepts.html.

173. Feeley, *supra* note 106, at 810 (emphasis added).

sanctuary: the *minister* of State passing laws for the sensitive *place* serves as a *government check* on the Church or the family through these *weapon laws*.

To remedy the state's usurpation of the Church's jurisdiction over the sanctuary, this Article proposes that the doctrines of church autonomy and the principles of the privilege of sanctuary must be applied by the Church to state weapon laws aimed at the Church. The Church must reassert its jurisdiction over the sanctuary, and the representatives of the Church must, in the place of the Church's sanctuaries, serve as a government check upon the State's attempts to control the Church.

V. SOLUTION: APPLY CHURCH AUTONOMY TO WEAPON LAWS AIMED AT CHURCHES

A. *Jurisdiction over the Sanctuary Generally*

The Church has jurisdiction over its own sanctuaries, and must be free to guard its own sanctuaries from the State's regulation and interference. Feeley acknowledged that the privilege of sanctuary is an independent right; it is a matter of church autonomy. It involves "*an assertion of an independent right, premised on natural and divine power, to prevent imminent harm to whomever the Church chooses to grant protection.*"¹⁷⁴ In biblical times, the priests and Levites confronted both the family's avengers of blood and the power of the civil magistrate with sanctuary in cities of refuge and at the altar. The Church later confronted the royal state with the privilege of sanctuary. In modern times, the Church must continue to confront the secular democratic state's attempts to usurp the Church's jurisdiction, but also continue to confront lawless criminals who would destroy the peace of the Church and the lives of God's people. The Church still has a duty to grant protection to people who come to its sanctuaries, in short, to *be a sanctuary*.

As the Church has an independent right to prevent imminent harm to those under its protection, the State has no jurisdiction to protect those who seek *the Church* for sanctuary. At common law, this privilege meant there were sanctuary places where the King's writ did not run. In modern terms, this means there are jurisdictional limitations upon the State's police power to regulate and disarm the Church through weapon laws. The State lacks the jurisdiction to disarm church leaders and church members who *could* prevent imminent harm to the Church and church members. Conversely,

174. *Id.* (emphasis added).

this also means the Church has the jurisdictional right to guard its sanctuaries and ban weapons therein, if a local church chooses to do so. However, the State may not make these decisions for the Church and usurps the jurisdiction of the Church when it does.

Thus, a jurisdictional defense to weapon laws aimed at the Church may be raised using the elements of the privilege of sanctuary.¹⁷⁵ The Church has an independent right and autonomous jurisdiction over *specific places*, its sanctuaries. The *representatives of the Church* must act consistently upon the Church's jurisdiction and reject the State's usurpations and attempts to control the sanctuary through its weapon laws, thus serving as a *government check*. The Church must confront the State through an appeal to *God's law*. If the Church does not act upon its autonomous jurisdiction, the Church has no chance of employing a jurisdictional defense to weapon laws aimed at the Church. The Church's jurisdiction means little unless it is confirmed by faithful, responsible action taken by church government.

B. *Jurisdiction over Who Enters the Sanctuary*

Because the Church has jurisdiction over the sanctuary, the Church necessarily has jurisdiction over who enters and does not enter the Church's sanctuaries. The Church, not the state, has the "keys of the kingdom of heaven,"¹⁷⁶ and thus has Christ's authority to open and shut the doors of Christ's Church on earth.¹⁷⁷ This authority to decide who enters the Church is a necessary corollary to the power of excommunication, which belongs to the Church, not the state.¹⁷⁸ The Church's authority extends to shutting the Church's doors to Christians who remain *unrepentant* fornicators, coveters, idolaters, adulterers, drunkards, and extortioners, etc., so that the Church

175. This article does not argue for a full-scale return to the common-law and ecclesiastical privilege of sanctuary. This article contends that apart from reviving that ancient privilege, the key common-law and biblical principles of the privilege remain viable and should be applied by the Church today against the State's weapon laws aimed at the Church.

176. *Matthew* 16:19 (King James); see *Westminster Confession of Faith*, XXX(1) (Rev. ed. 1960).

177. *Westminster Confession of Faith*, XXX(2) (Rev. ed. 1960) ("To these officers the keys of the kingdom of heaven are committed, by virtue whereof, they have power respectively to retain, and remit sins, to shut that kingdom against the impenitent, both by the word and censures; and to open it unto penitent sinners, by the ministry of the gospel, and by absolution from censures, as occasion shall require." (emphasis added)).

178. See *Matthew* 18:15–20; *1 Corinthians* 5:1–7.

puts “away from among [themselves] that wicked person.”¹⁷⁹ The Scripture does not permit the Church to shut its doors to those who bear arms in church. Bearing arms in the church is not (of itself) a sin subject to Church censure or excommunication. Because the State has no authority to excommunicate anyone from Christ’s Church, as a corollary, the State acts beyond its lawful authority when it shuts the doors to the Church by requiring men to disarm themselves before entering a church, or certain portions of a church.

Instead, the Church has the jurisdiction to bar the door to fellowship for those who would carry a weapon in the church only to kill and destroy the people of God. The Church also has the jurisdiction to bar certain parts of church grounds from general admission, such as a parochial or church school, daycare or childcare center, and other ministries under the Church’s protection. However, the Church’s door to fellowship with Christ must be open as wide as the call to repentance and faith in Jesus Christ, which goes out to all men,¹⁸⁰ Jews and Gentiles, armed and unarmed.¹⁸¹ The prophets Micah and Isaiah spoke of the days when *many people* from *all nations* will flow up to the Lord’s house, to learn the ways and laws of God and walk in His paths.¹⁸² The prophets describe this sequence. First, God’s law goes forth; second, God judges and rebukes the nations; and last, the nations forge their weapons into farming tools, with the result that “nation shall not lift up a sword against nation, neither shall they learn war any more.”¹⁸³

Weapon laws aimed at the Church reverse and attack this biblical pattern of national discipleship and evangelism. Such weapon laws require that men of entire states be disarmed *before* going to the house of the Lord. The prophets, in contrast, taught that many people of *entire nations*—as opposed to the *individuals* in the nations—would disarm themselves *after* God’s law went forth, and *after* God judged their nations. Thus it is that the Church, not the State, has the jurisdiction to decide who may enter the doors of the Church’s sanctuaries. The Church, not the State, has the jurisdiction to decide when to require men to lay down their warlike

179. 1 *Corinthians* 5:11–13 (King James).

180. See *Acts* 17:30 (King James) (“but [God] now commandeth all men every where to repent.”); *Matthew* 28:19 (King James) (“Go ye therefore and teach all nations.”).

181. *Luke* 3:14 (Soldiers repenting at John the Baptist’s preaching); *Luke* 22:38 (King James) (“And they said, Lord, behold, here are two swords. And he said unto them, it is enough.”).

182. See *Isaiah* 2:1–4; *Micah* 4:1–4.

183. *Micah* 4:3 (King James).

weapons—whether before coming to Christ, outside the house of God, or after the nations come to Christ, as a result of the declaration of God’s laws.

C. *Jurisdiction to Plan for Armed Defense of the Sanctuary*

Because the Church has the jurisdictional right to guard its own sanctuaries, the Church must act and create a specific plan for armed congregational defense. This means the local Church leaders must act and determine matters of church security as part of their regular church government. Pastors, priests, elders, and deacons have a biblical duty to guard their sanctuaries and protect the flock of God, the Church. Pastors who prepare specific plans to defend the Church and to protect the flock emulate Christ, the Good Shepherd:

“I am the door of the sheep. All that ever came before me are thieves and robbers: but the sheep did not hear them. . . . The thief cometh not, but for to steal, and to kill, and to destroy: I am come that they might have life, and that they might have it more abundantly. *I am the good shepherd: the good shepherd giveth his life for the sheep.* But he that is an hireling and not the shepherd, whose own the sheep are not, seeth the wolf coming, and leaveth the sheep, and fleeth: and the wolf catcheth them, and scattereth the sheep. . . . *I lay down my life for the sheep.*”¹⁸⁴

Christ, the Good Shepherd lays down his life for his sheep. Moreover, there are specific biblical examples of religious leaders preparing for necessary self-defense. Ahimelech, the priest at the city of Nob, kept Goliath’s sword stored with the priest’s ephod.¹⁸⁵ Jehoida, the high priest, deputized captains from the tribes to serve as temple guards by the altar during King Joash’s coronation. Jehoida’s temple guard was armed with King David’s spears and shields.¹⁸⁶ Pastors today likewise have a duty to guard, protect and defend the sheep, rather than refusing to defend them or rendering them defenseless by banning weapons in the Church apart from the State. *Not* acting in the area of Church safety is the same as disarming one’s own church members. This is pastoral abdication of the flock to the wolves, who seem quite content to devour and murder the flock.

184. *John* 10:7–8, 10–12, 15 (King James) (emphasis added).

185. *1 Samuel* 21:8–9.

186. *2 Kings* 11:10–11.

There are a growing number of resources available to help the Church and church leaders guard and defend the flock of God. To that end, Pastor Jimmy Meeks has authored a short essay called "Protecting the Flock" in which he outlines the basic Scriptural principles about pastors defending the flock of God.¹⁸⁷ On the legal side of these issues, the Alliance Defending Freedom has provided the Church with excellent, easily accessible resources both on church safety and on church autonomy.¹⁸⁸ Opaque Security is an international security company that offers churches security training.¹⁸⁹ SafeAtChurch.org has also organized Church Safety Seminars at various locations in the United States.¹⁹⁰ Sheepdog Seminars Group hosts Sheepdog Seminars for Churches, which are "multi-day seminars detailing how to stay safe at church and to effectively respond to violent events."¹⁹¹

Thus, the leaders of the Church must act and determine matters of church security as part of their regular church government decisions. If the Church does not act upon its own autonomous jurisdiction, the Church has no chance of employing a jurisdictional defense to the application of weapon laws aimed at the Church. The Church's leaders must act upon the Church's jurisdiction, take responsibility in these areas as a matter of church government, and guard the flock of God.

D. *Jurisdiction over Firearms Storage in the Sanctuary*

Because the Church has jurisdiction over the sanctuary, the Church also has jurisdiction over decisions regarding firearms storage in the church. Georgia's carry law contains express directives for what religious leaders *must do* if the local church allows concealed weapons to be carried *to* the sanctuary, not *in* the sanctuary.¹⁹² Church security or management must give explicit directions for "removing, securing, storing, or temporarily surrendering such weapon or long gun."¹⁹³ Georgia's carry law gives church leaders *no discretion* to allow firearms to be carried concealed in the

187. Rev. Jimmy Meeks, *Protecting the Flock*, available at <http://www.safeatchurch.org/protect-the-flock.html>.

188. SPEAK UP MOVEMENT, available at <http://www.speakupmovement.org/church/LearnMore/Details/3767>.

189. OPAQUE SECURITY, available at <http://opaquesecurity.com/>.

190. SAFEATCHURCH.ORG, available at <http://www.safeatchurch.org/church-safety-seminars.html>.

191. SHEEPDOG SEMINARS INTERNATIONAL, available at <http://sheepdogseminars.com/>.

192. GA. CODE ANN. § 16-11-127(d)(2) (West, Westlaw through 2013 Legis. Sess.).

193. *Id.*

church.¹⁹⁴ The First Amendment protects the Church from this type of state control. The First Amendment guarantees the Church's "independence from secular control or manipulation" and reserves the "power to decide for themselves, free from state interference, *matters of church government* as well as those of faith and doctrine."¹⁹⁵ "[T]he First Amendment 'permit [s] . . . religious organizations to establish their *own rules and regulations for internal . . . government.*'"¹⁹⁶

The decision of whether to require concealed weapons to be removed, secured, stored, or surrendered is an internal polity matter to be decided by regular church government, who may determine whether firearms should be stored or surrendered upon arrival. To be sure, the decision to explicitly require that firearms to be stored, surrendered, or relinquished upon arrival at church may be prudent in certain cases. In other cases, however, the decision may be utterly foolish. In either case, the State violates the jurisdiction of the Church by giving specific directives for church leaders concerning how they must manage and store weapons that are brought to the sanctuary of a local church.¹⁹⁷ The Church's jurisdictional right to decide matters pertaining to firearm storage must be free from this type of meddling by the State.

194. Additionally: what should the Church's leaders do with the weapon once the weapon is removed, secured, stored, or surrendered? Georgia's statute logically requires a church to have some type of armory, locker, or safe for holding the temporarily surrendered or relinquished weapons – unless a church adopts a policy of turning away anyone that arrives with a concealed weapon.

195. *Kedroff v. St. Nicholas Cathedral of Russian Orthodox Church in N. Am.*, 344 U.S. 94, 116 (1952) (emphasis added).

196. *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. E.E.O.C.*, 132 S. Ct. 694, 705 (2012) (emphasis added).

197. See GA. CODE ANN. § 16-11-127(d)(2) (West, Westlaw through 2013 Legis. Sess.) In contrast to Georgia's statute, if a person bearing a firearm arrived at a West Virginia church, the church might allow the possession of the weapon, or might request the person to relinquish the firearm temporarily. See W. VA. CODE ANN. § 61-7-14 (West, Westlaw through 2013 1st Extraordinary Sess.). West Virginia's statute, however, does not require any particular action by church leadership. See *id.* If a state legislature feels compelled to craft a weapons law that applies to churches, West Virginia's statute has much to commend it. The West Virginia statute leaves these decisions to the church as the property owner and to the person carrying a firearm to church, thus honoring the jurisdiction of the Church, the First Amendment Free Exercise Clause, and the Second Amendment. See *id.* "Any person carrying or possessing a firearm or other deadly weapon on the property of another" has the option of (1) temporarily relinquishing possession of the firearm upon being requested to do so or (2) leaving the premises. *Id.*

E. *Jurisdiction over Weapons Training for the Sanctuary*

Because the Church has jurisdiction over its sanctuaries and over any plans for armed congregational defense, the Church also has jurisdiction over internal decisions regarding any firearms training. Louisiana's carry law violates the Church's jurisdiction in this regard. If a Louisiana church permits a church member to carry a concealed weapon in the sanctuary, Louisiana's carry law requires that the church member receive eight hours of tactical training annually.¹⁹⁸ Louisiana's concealed-carry weapons training requirements aimed at the Church are unique among the states. Like Georgia's carry law that requires the Church to store surrendered weapons on a temporary basis, Louisiana's statute may be wise as a practical matter—in some cases. However, the practical wisdom of a statute does not somehow invest the State with jurisdiction over the Church. The decision to require annual tactical training is a decision properly left to church leadership as an internal decision of church government, not to the state government.

F. *Jurisdiction over Congregational Notice About Weapons Decisions*

The Church has jurisdiction over the decision to notify the congregation that certain church members or leaders are authorized to carry concealed weapons. Louisiana's carry law blatantly interferes with the Church's jurisdiction to decide, as an internal church government matter, whether the particular congregation should know if certain members of the church are authorized to carry weapons.¹⁹⁹ In some local churches, such an announcement would likely startle no one. In other churches, it would be foolishness for church leaders to authorize concealed-carry for a few souls and inform the congregation of this decision.²⁰⁰ Congregational notice of the decision to authorize concealed-carry in a local church is a decision that must remain under the jurisdiction of the Church.

G. *Jurisdiction to Reject Statist Usurpations upon the Church*

Because the Church has jurisdiction over the sanctuary, the state does not have overlapping jurisdiction over the Church's sanctuaries, absent a

198. LA. REV. STAT. ANN. § 40:1379.3(U)(5) (West, Westlaw through 2013 Legis. Sess.).

199. See LA. REV. STAT. ANN. § 40:1379.3(U) (West, Westlaw through 2013 Legis. Sess.).

200. The author notes that when he received permission from church leadership to carry a concealed weapon, he was requested not to inform the congregation. Such a request would be illegal in Louisiana.

true criminal offense.²⁰¹ This means the Church must reject statist usurpations upon the Church's jurisdictional right to determine matters of church security through regular church government. Thus, at a minimum, the Church should be highly cautious about developing church security plans at the behest of state or federal government. Applying a biblical metaphor, the Church has no need to "sharpen our weapons" in an enemy camp as the Philistines required the disarmed Israelites to do during King Saul's reign.²⁰² The White House, however, not wanting to miss an opportunity to offer guidance to the Church, released *Guide for Developing High-Quality Emergency Operations Plans for Houses of Worship* in June 2013. The guide includes ten pages on "Active Shooter Situations."²⁰³ The guidebook encourages churches to plan internal weapons policies: "Each house of worship should determine, as part of its planning process, policies on the control and presence of weapons, as permitted by law."²⁰⁴

This statement is inaccurate. The Church's determination of the "policies on the control and presence of weapons" is not just a "planning process." The Church's determination of policies on the control and presence of weapons will unavoidably be a matter of church government and internal church polity, making the Church's planning process one over which the State has no jurisdiction to even make recommendations.

While the White House guide may contain some good principles, neither the national government nor state governments have the jurisdiction or the constitutional authority to offer emergency operation

201. This article assumes that weapon laws are not *criminal* laws; they are public safety regulations that might be consistent with the State's general "police-power" to regulate in areas of health, safety, welfare, and morals. However, such "police-power" regulations are invalid, for they offend the independent jurisdiction of the Church and also abrogate the Church's private property rights to regulate the presence of weapons.

202. 1 *Samuel* 13:19–22 (King James) ("Now there was no smith found throughout all the land of Israel: for the Philistines said, Lest the Hebrews make them swords or spears: But all the Israelites went down to the Philistines, to sharpen every man his share, and his coulter, and his axe, and his mattock. Yet they had a file for the mattocks, and for the coulters, and for the forks, and for the axes, and to sharpen the goads. So it came to pass in the day of battle, that there was neither sword nor spear found in the hand of any of the people that were with Saul and Jonathan: but with Saul and with Jonathan his son was there found.").

203. *Guide for Developing High-Quality Emergency Operations Plans for Houses of Worship*, 23–32, available at http://www.whitehouse.gov/sites/default/files/docs/developing_eops_for_houses_of_worship_final.pdf.

204. *Id.* at 30.

plans for the Church.²⁰⁵ The White House simply has no jurisdiction to even recommend that church congregants and staff who face an “active shooter situation” should “run, hide, or fight.”²⁰⁶ This is only after the guidebook first suggests, “If neither running nor hiding is a safe option, as a last resort, when confronted by the shooter, adults in immediate danger should consider trying to disrupt or incapacitate the shooter by using aggressive force and items in their environment, *such as fire extinguishers or chairs.*”²⁰⁷

Well over 350 years ago, Rev. Samuel Rutherford provided a biblical and legal explanation of the “run, hide, fight” principles, as applied to the Church. He explained that flight, or “run and hide,” is a lawful means of self-defense for a *private* individual, but not a lawful means to self-defense for a whole church consisting of women, the aged, nursing children, the sick and diseased:

Now a private man may fly, and and [sic] that is his second necessity; and violent re-offending is the third mean of self-preservation; but, with leave, violent re-offending is necessary to a private man, when his second mean, to wit, flight, is not possible, and cannot attain the end, as in the case of David: if flight do not prevail, Goliath’s sword and an host of armed men are lawful. So, to a church and a community of protestants, men, women, aged, sucking children, sick, and diseased, who are pressed either to be killed or forsake religion and Jesus Christ, flight is not the second mean, nor a mean at all, because not possible, and therefore not a natural mean of preservation; for the aged, the sick, [and] sucking infants, and sound religion in the posterity cannot flee; flight here is physically, and by nature’s necessity, impossible, and therefore no lawful mean. . . . I see not how natural defense [sic] can put us to flee, even all protestants

205. See *M’culloch v. Maryland*, 17 U.S. 316 (1819) (“This government is acknowledged by all, to be one of enumerated powers.”). Offering guidance on church security is not one of the federal government’s enumerated powers given to the executive branch. Even if it could somehow be an implied power under the “necessary and proper” clause (Art. 1, Sec. 8, Clause 10, U.S. Constitution) that power would run afoul of the First Amendment.

206. *Guide for Developing High-Quality Emergency Operations Plans for Houses of Worship*, *supra* note 203, at 29.

207. *Id.* at 30 (emphasis added).

and their seed, and the weak and the sick, whom we are obliged to defend as ourselves, both by the law of nature and grace.²⁰⁸

Likewise, today, when a whole church community “are pressed . . . to be killed,” in an “active shooter situation,” flight may be impossible for the “women, aged, sucking children, sick, and diseased.” Because flight is physically impossible for such weaker church members, flight (run and hide) is also morally impermissible for church leaders and the stronger members. “An host of armed men are lawful,” for “we are obliged to defend [them] as ourselves, both by the law of nature and grace.” Thus, when preparing for the possibility of an active shooter situation, church leaders—who are obliged to defend their flock—should modify the White House’s slogan: “Run, Hide, Fight.”

The Church does not need such slogans; the Church comes well equipped with aphorisms that advise men how to deal with violent and dangerous situations. “Watch ye, stand fast in the faith, *quit you like men*, be strong.”²⁰⁹ “[B]e of good courage, and *let us play the men for our people*, and for the cities of our God: and the LORD do that which seemeth him good.”²¹⁰ “[B]e not ye afraid of them: remember the Lord, which is great and terrible, and *fight for your brethren, your sons, and your daughters, your wives*.”²¹¹ David’s words concerning Goliath are appropriate: “[W]ho is this uncircumcised Philistine, that he should defy the armies of the living God?”²¹² “The sword of the LORD, and of Gideon!”²¹³ The Church must reject the State’s usurpations and recommendations about Church safety as attacks on the Church’s jurisdictional right to determine matters of church security through internal church polity. The Church has no need to rely upon the arm of the State in this or any area.

This Article now turns from the above jurisdictional proposals to consider the plausibility of a constitutional challenge to weapon laws aimed at the Church.

208. SAMUEL RUTHERFORD, *LEX, REX, OR THE LAW AND THE PRINCE* 160 (1644). Rutherford states that the first means a private man may defend himself is by supplication and apologies; the second by flight; and the third by “violent re-offending,” or the use of “Goliath’s sword.” *Id.*

209. 1 *Corinthians* 16:13 (King James) (emphasis added).

210. 2 *Samuel* 10:12 (King James) (emphasis added).

211. *Nehemiah* 4:14 (King James) (emphasis added).

212. 1 *Samuel* 17:26 (King James).

213. *Judges* 7:18, 20 (King James).

VI. SOLUTION: A CONSTITUTIONAL CHALLENGE TO WEAPON LAWS
AIMED AT CHURCHES

A. *The Baptist Tabernacle's Misfired Challenge to Georgia's Statute*

There is a scarcity of recent cases that address weapon laws aimed at the Church from a First Amendment and Second Amendment context.²¹⁴ The 2012 *GeorgiaCarry.Org v. Georgia*²¹⁵ decision involving the Baptist Tabernacle of Thomaston, Georgia is one. The Baptist Tabernacle's plaintiffs in *GeorgiaCarry.Org* brought both First Amendment and Second Amendment challenges to Georgia's concealed-carry statute.²¹⁶ The plaintiffs alleged that Georgia's statute "interferes with the free exercise of religion by Plaintiffs by prohibiting them from engaging in activities in a place of worship when those activities are permitted throughout the state."²¹⁷ After some analysis, the Eleventh Circuit Court of Appeals concluded that the Baptist Tabernacle plaintiffs failed "to state a Free Exercise Clause challenge because Plaintiffs omit any factual matter showing how the Carry Law burdens a sincerely held religious belief."²¹⁸ The *GeorgiaCarry.Org* court reasoned:

At various points, Plaintiffs allege that they would like to carry a handgun in a place of worship for the protection either of themselves, their family, their flock, or other members of the Tabernacle. Plaintiffs conclude by alleging that the Carry Law interferes with their free exercise of religion by prohibiting them from engaging in activities in a place of worship when those activities are generally permitted throughout the State. That Plaintiffs "would like" to carry a firearm in order to be able to act in "self-defense" is a personal preference, motivated by a secular purpose. As we note *supra*, there is no First Amendment

214. See generally, FIREARMS LAW DESKBOOK § 1:4 (2012) (surveying post-*Heller* decisions).

215. *GeorgiaCarry.Org, Inc. v. Georgia*, 687 F.3d 1244 (11th Cir. 2012).

216. *Id.* at 1249. Plaintiffs alleged "in their Amended Complaint that they regularly attend religious services, possess a weapons carry license, and 'would like to carry a handgun' while in a place of worship." *Id.*

217. *Id.* at 1253.

218. *Id.* at 1255.

protection for personal preferences; nor is there protection for secular beliefs.²¹⁹

The *GeorgiaCarry.Org* court concluded, “conclusory allegations that the Carry Law interferes with Plaintiffs’ free exercise of religion are not sufficient to survive a motion to dismiss. Their Free Exercise claim is not plausible and the District Court correctly dismissed it.”²²⁰

As to the Second Amendment challenge to Georgia’s carry law, the Baptist Tabernacle “Plaintiffs allege[d] that ‘[the Carry Law] infringes on the rights of Plaintiffs to keep and bear arms, in violation of the Second Amendment, by prohibiting them from possessing weapons in a place of worship.’”²²¹ The court made the following assumptions:

Plaintiffs must argue that the individual right protected by the Second Amendment, in light of *Heller* and *McDonald*, trumps a private property owner’s right to exclusively control who, and under what circumstances, is allowed on his or her own premises. In short, we read Plaintiffs’ claim to assume the following: management of a place of worship is likely to bar license holders from carrying an unsecured firearm on the premises; the license holders are unlikely to comply with management’s instructions; management is likely to report such conduct to law enforcement; the license holders are likely to be arrested by for [sic] their refusal to comply with management’s instructions; and the arrest establishes a Second Amendment violation.²²²

The court then considered whether “the restricted activity is protected by the Second Amendment in the first place.”²²³ The court focused on the fact that “a place of worship is private property, not public property,” alluded to the importance of the historical background of private property rights, and then sought to “identify the scope of any pre-existing right to bear arms on the private property of another.”²²⁴ However, the court did *not* attempt to identify the *scope* of the pre-existing right to bear arms *in the Church*. The court concluded that

219. *Id.* at 1258.

220. *Id.* at 1259 (citation omitted).

221. *Id.* at 1260.

222. *Id.* at 1261 (footnote omitted).

223. *Id.* at 1260 n.34.

224. *Id.* at 1261.

[T]he Second Amendment does not include protection for a right to carry a firearm in a place of worship against the owner's wishes. . . . A place of worship's right, rooted in the common law, to forbid possession of firearms on its property is entirely consistent with the Second Amendment.²²⁵

....

. . . We conclude that the Second Amendment does not give an individual a right to carry a firearm on a place of worship's premises against the owner's wishes because such right did not pre-exist the Amendment's adoption.²²⁶

The *GeorgiaCarry.Org* decision sets up the problem for this part of this Article: are Second Amendment and First Amendment Free Exercise claims against weapon laws aimed at the Church even plausible? Many would say such claims, as in *GeorgiaCarry.Org*, would not survive a motion to dismiss. After all, hasn't Justice Scalia stated in *Heller* that "the right secured by the Second Amendment is not unlimited"?²²⁷ Indeed, the United States Supreme Court took pains to assure the reader the Court would not "cast doubt on longstanding prohibitions on . . . laws forbidding the carrying of firearms in sensitive places such as schools and government buildings . . ."²²⁸

Such claims are plausible. Weapon laws regulating "sensitive places" are only "presumptively lawful regulatory measures."²²⁹ Weapon laws aimed at the Church retain only a *presumption* of legality—until the Church and churchgoers act to pull down the presumption of lawfulness. Weapon laws aimed at the Church are susceptible to a constitutional challenge under both the Second Amendment and the Free Exercise Clause jurisprudence under the First Amendment.

B. *A Second Amendment Challenge to Weapon Laws Aimed at Churches*

The Second Amendment reads, "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."²³⁰ The United States Supreme Court's interpretation of the Second Amendment greatly improved with the case of

225. *Id.* at 1264.

226. *Id.* at 1266.

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

228. *Id.* at 626.

229. *Id.* at 627 n.26.

230. U.S. CONST. amend. II.

*District of Columbia v. Heller*²³¹ and also changed, for better or for worse, in *McDonald v. City of Chicago*,²³² which applied the Second Amendment to the states through the “incorporation” doctrine.²³³ In *Heller*, the majority of the Court rejected an “interest-balancing” approach in holding that the right to keep and bear arms was an individual right:

We know of no other enumerated constitutional right whose core protection has been subjected to a freestanding “interest-balancing” approach. The very enumeration of the right takes out of the hands of government—even the Third Branch of Government—the power to decide on a case-by-case basis whether the right is *really worth* insisting upon. A constitutional guarantee subject to future judges’ assessments of its usefulness is no constitutional guarantee at all. *Constitutional rights are enshrined with the scope they were understood to have when the people adopted them*, whether or not future legislatures or (yes) even future judges think that scope too broad.²³⁴

Instead of an interest-balancing test, *Heller* declared that:

“The Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary as distinguished from technical meaning.” Normal meaning may of course include an idiomatic meaning, but it excludes secret or technical meanings that would not have been known to ordinary citizens in the founding generation.²³⁵

To determine the meaning of the Second Amendment, *Heller* looked to the plain text and the relevant history of the founding era.²³⁶ The Church and churchgoers must use *Heller*’s framework as a model for challenging weapon laws aimed at the Church, as explained below.

First, the plain text Second Amendment provides that the right of the people to keep and bear arms “*shall not be infringed*.” The meaning of the last clause is clear, to those readers unencumbered by three years of law

231. *Heller*, 554 U.S. at 570.

232. *McDonald v. City of Chicago*, Ill., 130 S. Ct. 3020 (2010).

233. *See id.* at 3026 (holding that the Second Amendment fully applies to the states).

234. *Heller*, 554 U.S. at 634–35 (emphasis added).

235. *Id.* at 576–77 (quoting *United States v. Sprague*, 282 U.S. 716, 731 (1931)).

236. *Id.* at 579–92.

school and decades of interest-balancing jurisprudence.²³⁷ The Georgia Supreme Court, as quoted in *Heller*, provided a helpful amplification of the clause “shall not be infringed:”

“The right of the whole people, old and young, men, women and boys, and not militia only, to keep and bear arms of every description, and not such merely as are used by the militia, *shall not be infringed, curtailed, or broken in upon, in the smallest degree*; and all this for the important end to be attained: the rearing up and qualifying a well-regulated militia, so vitally necessary to the security of a free State. Our opinion is, that any law, State or Federal, is repugnant to the Constitution, and void, *which contravenes this right*, originally belonging to our forefathers, trampled under foot by Charles I. and his two wicked sons and successors, re-established by the revolution of 1688, conveyed to this land of liberty by the colonists, and finally incorporated conspicuously in our own Magna Charta!”²³⁸

Weapon laws aimed at the Church *infringe, curtail, contravene, and break in upon* the rights of the people to bear arms in the church sanctuary. These statutes infringe this right by, among other things, requiring church members to obtain concealed-carry licenses before bearing arms in the church; regulating the manner church-members may bear arms at church—as with concealed-carry bans in the church or in church ministries such as daycares, childcares, and schools; regulating tactical training—as with Louisiana’s carry law; regulating the storage of weapons at church—as with Georgia’s carry law; and completely barring weapons at church—as with North Dakota’s law.

Second, as to the history of the founding era, *Heller* contains a passing reference to Georgia’s 1770 statute that required men to bear arms in church.²³⁹ The *GeorgiaCarry.Org* court also acknowledged in passing that

237. In fact, *Black’s Law Dictionary* does not even define the word “infringed” in a Second Amendment context. See BLACK’S LAW DICTIONARY 796–97 (8th ed. 2004) (defining “infringement” only with reference to patent law).

238. *Heller*, 554 U.S. at 612–13 (quoting *Nunn v. State*, 1 Ga. 243, 251 (1846)) (emphasis altered).

239. *Id.* at 601 (referencing “the 1770 Georgia law that ‘for the security and defence of this province from internal dangers and insurrections’ required those men who qualified for militia duty individually ‘to carry fire arms’ ‘to places of public worship’”) (quoting COLONIAL RECORDS OF THE STATE OF GEORGIA, *supra* note 4, at 137–39).

“certain colonies, including Georgia, enacted laws requiring the possession of firearms in a place of worship at one point or another.”²⁴⁰ However, the *GeorgiaCarry.Org* court reasoned that,

Based on the language of Georgia’s statute, the primary motivation for requiring attendance at a place of worship with a firearm was likely a practical one; that is, the colonial government identified a time when much of the community would be gathered in one location—each Sunday at a place of worship for services—to ensure that individuals both possessed the equipment necessary for defense and kept it in a state of readiness should their services be called upon to defend the community against an internal or external threat.²⁴¹

The court completely overlooked the obvious impact of these “public safety” statutes on the scope of the right to bear arms. *Heller* stands for the proposition that “[c]onstitutional rights are enshrined with the scope they were understood to have when the people adopted them.”²⁴² Many colonial Americans bore firearms “*each Sunday at a place of worship for services.*”²⁴³ To understand the *scope* of the right to bear arms, it is necessary to determine whether the practice of bearing arms in the Church was widespread throughout the colonies.

Clayton Cranmer’s writings on the Second Amendment provide helpful summaries of colonial laws that required men to bear arms to church.²⁴⁴ In 1619, Virginia law “required everyone to attend church on the Sabbath, ‘and all suche as beare armes shall bring their pieces, swords, powder and shotte.’”²⁴⁵ In 1643, Connecticut ordered that “[t]o prevent or withstand such sudden assaults as may be made by Indeans upon the Sabbath or lecture dayes, It is Ordered, that one person in every several howse wherein is any souldear or souldears, shall bring a musket, pystoll or some peece,

240. *GeorgiaCarry.Org, Inc., v. Georgia*, 687 F.3d 1244, 1264 n.42 (11th Cir. 2012).

241. *Id.*

242. *Heller*, 554 U.S. at 634–35.

243. *GeorgiaCarry.Org*, 687 F.3d at 1264 n.42.

244. Clayton Cranmer, *Colonial Firearms Regulation*, 16 J. ON FIREARMS & PUB. POL’Y (N.D.) SECOND AMENDMENT FOUND., available at <http://www.saf.org/journal/16/colonialfirearmregulation.pdf>.

245. *Id.* at *7 (quoting PROCEEDINGS OF THE VIRGINIA ASSEMBLY, 1619 reprinted in LYON GARDINER TYLER, NARRATIVES OF EARLY VIRGINIA, 1606-25 at 273 (1959)).

with powder and shott to e[a]ch meeting.”²⁴⁶ A 1636 Massachusetts law required every person above eighteen years of age, with the exception of magistrates and elders of the churches, to “come to the publike assemblies with their muskets, or other peeces fit for servise, furnished with match, powder, & bullets, upon paine of 12d. for every default.”²⁴⁷ This law—or the law for Plymouth Planation cited *infra*—might be part of the inspiration behind George Henry Broughton’s famous 1867 painting, *Pilgrims Going To Church*, originally titled *The Early Puritans of New England Going to Church*, in which several arms-bearing Pilgrim men escort the pastor, women, and children to church.

In 1639, Rhode Island ordered that “none shall come to any public Meeting without his weapon.”²⁴⁸ In 1642, a Maryland law stated, “Noe man able to bear arms to goe to church or Chappell . . . without fixed gunn and 1 Charge at least of powder and Shott.”²⁴⁹ A 1641 law for Plymouth Plantation required “[t]hat every Towneship within this Government do carry a competent number of pieeces fixd and compleate with powder shott and swords every Lord’s day to the meetings.”²⁵⁰ The law obligated a member of each household to bring weapons to church during a set time of the year: “[O]ne of a house from the first of September to the middle of November, except their be some just & lawfull impedyment.”²⁵¹ In 1738, a Virginia statute required all militiamen to come to church armed, if requested by the county’s militia commander.²⁵² In 1743, South Carolina law required that:

246. *Id.* at *6 (quoting THE PUBLIC RECORDS OF THE COLONY OF CONNECTICUT, PRIOR TO THE UNION WITH NEW HAVEN COLONY (Hartford, Conn.: Brown & Parsons ed., 1850), 1:95, 96).

247. *Id.* at 7* (quoting NATHANIEL B. SHURTLEFF, RECORDS OF THE GOVERNOR AND COMPANY OF THE MASSACHUSETTS BAY IN NEW ENGLAND (Boston: William White ed., 1853) 1:190).

248. *Id.* (citing RECORDS OF THE COLONY OF RHODE ISLAND AND PROVIDENCE PLANTATIONS, IN NEW ENGLAND (John R. Bartlett ed., 1856) 1:94).

249. *Id.* (quoting ARCHIVES OF MARYLAND (Baltimore: William Hand Browne, ed., 1885) 3:103).

250. *Id.* (quoting THE COMPACT WITH THE CHARTER AND LAWS OF THE COLONY OF NEW PLYMOUTH 70 (William Brigham ed., 1836)).

251. *Id.* (quoting THE COMPACT WITH THE CHARTER AND LAWS OF THE COLONY OF NEW PLYMOUTH at 115).

252. *Id.* (citing WILLIAM WALLER HENING, THE STATUTES AT LARGE; BEING A COLLECTION OF ALL THE LAWS OF VIRGINIA, FROM THE FIRST SESSION OF THE LEGISLATURE, IN THE YEAR 1619 at 1:198 (1823)).

“[E]very white male inhabitant of this Province . . . who [are] liable to bear arms in the militia of this Province . . . shall, on any Sunday or Christmas day in the year, go and resort to any church or any other public place of divine worship within this Province, and shall not carry with him a gun or a pair of horse-pistols . . . with at least six charges of gun-powder and ball, and shall not carry the same into the church or other place of divine worship as aforesaid” would be fined twenty shillings.²⁵³

Without a doubt, these laws constitute an important part of the historical record about bearing arms in the church prior to 1789. Based on the colonial laws preceding the adoption of the Second Amendment that made it a legal *duty* to bear arms in church, the scope of the legal *right* to bear arms extends to the church, the place of divine worship. To maintain that the *scope* of the right to bear arms did *not* extend to the church makes no sense; colonial Americans bore arms in the church on a regular basis and were expected to do so. Early Americans gathered in one location and had a right to bear arms in that *specific location*—the church, each Sunday.

Heller's no-nonsense approach to the Second Amendment offers a roadmap for future Second Amendment litigation that is faithful to both the text of the Constitution and the history of our country. When the Church and churchgoers seek to challenge weapon statutes that infringe the pre-existing right to bear arms in the Church, a well-researched and well-prepared Second Amendment claim based on *Heller* should be sufficient to demolish arguments in favor of such a weapon statute—that is, if the trial court and appellate court does not bow to the balancing tests.

C. *A Free Exercise Challenge to Weapon Laws Aimed at Churches*

While weapon laws aimed at the Church are susceptible to a Second Amendment challenge under *Heller*, such laws are also susceptible to a First Amendment Free Exercise challenge under the United States Supreme Court's jurisprudential “balancing tests”—which *Heller* rejected, with good reason, because “[a] constitutional guarantee subject to future judges' assessments of its usefulness [with an interest-balancing test] is no

253. *Id.* (quoting STATUTES AT LARGE OF SOUTH CAROLINA 7:417 (David J. McCord ed., 1840)).

constitutional guarantee at all.”²⁵⁴ Nonetheless, one who brings a First Amendment challenge to weapon laws aimed at the Church must realize that many judges assume that judicial opinions based on interest-balancing tests, rather than the text of the Constitution, are the law of the land. But the law and the judicial opinions based on balancing tests are not equivalents. Blackstone explained that “*the law, and the opinion of the judge, are not always convertible terms, or one and the same thing; since it sometimes may happen, that the judge may mistake the law. Upon the whole, however, we may take it as a general rule, ‘that the decisions of courts of justice are the evidence of what is common law.*”²⁵⁵

Judges have no power to alter the Constitution, but judges may grossly *mistake* the law through interest-balancing tests. Because judges make mistakes with the law and do err, those who challenge weapon laws aimed at the Church should not endeavor to perpetuate judicial mistakes. Rather, they should follow *Heller’s* example: advance the claims by standing firmly on the textual meaning and history of the Constitution. Nonetheless, those who challenge such laws must realize the practical wisdom of arguing the case using the Supreme Court’s interest-balancing tests. This means carefully, diligently advancing two legal theories—one based on law, text, and history, and the other on judicial opinions and interest-balancing. The first theory is necessary to regain lost ground. The second is necessary to prove that the case may be won, even with the assumptions of modern jurisprudence.

Churches and church members who seek to bring a Free Exercise Clause challenge under the United States Supreme Court’s “balancing-test” jurisprudence²⁵⁶ to weapon laws aimed at churches must be prepared to present specific evidence showing how the law impermissibly burdens your sincerely held religious belief. Or, alternatively, churches and church members must be prepared to show that the State has no legitimate governmental interest in weapon laws aimed at the Church and prove that the statute in question is not “rationally related” to protect any legitimate

254. *District of Columbia v. Heller*, 554 U.S. 570, 634 (2008). The First Amendment needs its own “Heller” decision to refocus on the plain text and the history of the Constitution.

255. 1 WILLIAM BLACKSTONE, COMMENTARIES *71.

256. The United States Supreme Court’s jurisprudence on the First Amendment is a vastly different thing from the original meaning of the First Amendment and how to state a claim under the original text. Thus, this Article separates the text of the First Amendment from case precedent supposedly under the First Amendment, much like the Supreme Court has done with its jurisprudence.

state interest. The United States Supreme Court explained the typical burden of proof:

[A] law that is neutral and of general applicability need not be justified by a compelling governmental interest even if the law has the incidental effect of burdening a particular religious practice. Neutrality and general applicability are interrelated, and, as becomes apparent in this case, failure to satisfy one requirement is a likely indication that the other has not been satisfied. A law failing to satisfy these requirements must be justified by a compelling governmental interest and must be narrowly tailored to advance that interest.²⁵⁷

Thus, under current Free Exercise Clause jurisprudence, there are two available methods of framing a challenge to weapon laws. The first method places a heavy burden of proof on the plaintiff and a light burden on the State. If the law in question is a neutral law of general applicability, then “rational basis scrutiny should be applied, requiring that the plaintiff show that there is not a legitimate governmental interest or that the law is not rationally related to protect that interest.”²⁵⁸

The second type of Free Exercise challenge—the “compelling interest test”—places a heavier burden of proof on the State. The Supreme Court stated:

Although a law targeting religious beliefs as such is never permissible, if the object of a law is to infringe upon or restrict practices because of their religious motivation, the law is not neutral; and it is invalid unless it is justified by a compelling interest and is narrowly tailored to advance that interest.²⁵⁹

Further, “[a]t a minimum, the protections of the Free Exercise Clause pertain if the law at issue discriminates against some or all religious beliefs or regulates or prohibits conduct because it is undertaken for religious reasons.”²⁶⁰ “To determine the object of a law, we must begin with its text[,]” and “[a]part from the text, the effect of a law in its real operation is

257. *Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 531–32 (1993) (citation omitted).

258. *GerogiaCarry.Org, Inc., v Georgia*, 687 F.3d 1244, 1255 n.21 (11th Cir 2012).

259. *Church of the Lukumi*, 508 U.S. at 533 (citations omitted).

260. *Id.* at 532.

strong evidence of its object.”²⁶¹ This Article now applies these two balancing tests to weapon laws aimed at the Church.

D. *Rational-Basis Review and the Free Exercise Clause*

Under rational-basis review, most weapon laws are facially neutral and generally applicable to everyone, regardless of religion. Thus, unless a plaintiff could prove the *object* of the law is to infringe upon or restrict practices that are religiously motivated, rational-basis review applies. Under “rational-basis” review, the Church must show that the State had no legitimate *governmental* interest in passing weapon laws aimed at the Church or prove the law is not rationally related to that legitimate state interest. The Church should show the State’s lack of a legitimate governmental interest in such weapon laws in at least two ways.

First, the Church must assert that the State has no legitimate *governmental* interest in regulating the possession of weapons in the Church’s sanctuaries because the State has no jurisdiction over the Church and the Church’s religious “interests.” As James Madison stated:

We maintain therefore that in matters of Religion, no man’s right is abridged by the institution of Civil Society and that *Religion is wholly exempt from its cognizance. . . .*

Because Religion be exempt from the authority of the Society at large, still less can it be subject to that of the Legislative Body.²⁶²

The Church is wholly exempt from the cognizance or jurisdiction of the State. Thus, the Church cannot be subject to the legislative authority of the State in areas of church government and internal church polity regarding weapons possession and regulation. The other jurisdictional arguments concerning various weapon laws from Part III, *supra*, could be employed here to demonstrate that these matters are Church interests, not State interests.

Second, the Church must assert that the State has no legitimate *governmental* interest in regulating the possession of firearms on the *private* property of the Church. Most of the “sensitive areas” where the possession of firearms is enjoined by concealed-carry statutes are government buildings, not private buildings. Hudson and Adams opined that:

261. *Id.* at 533, 535.

262. Madison, *supra* note 83, at 167 (emphasis added).

Because places of worship cannot be publically owned, pursuant to the First Amendment, the [GeorgiaCarry.Org] plaintiffs may be victorious in their challenge. An included purpose of the Act *was to give private property owners a choice of whether to allow licensed weapons carry onto their property*, but the Act bans guns on private property recognized as “places of worship.” This inconsistency may prove fatal for that particular provision of the Act.²⁶³

The *GeorgiaCarry.Org* court, however, upheld Georgia’s carry law against the Baptist Tabernacle plaintiffs precisely because a church is private property: “[T]he Second Amendment does not give an individual a right to carry a firearm on a place of worship’s premises [private property] against the owner’s wishes because such right did not pre-exist the Amendment’s adoption.”²⁶⁴ Thus, the court maintained that it was upholding the Church’s property rights, even though a church was one of the named plaintiffs challenging Georgia’s carry law. The court did not share Hudson and Adams’ opinion that Georgia’s carry law completely banned weapons in church but did not explain how the law might be construed to lead to that conclusion.²⁶⁵ Hudson and Adams’ view of the Georgia carry law is much more accurate to the plain text of the statute and also takes account of the legislative history. Moreover, if the Georgia carry law actually deferred to the wishes of churches as private property owners, it would say so, like the part of the law providing that owners of bars may authorize concealed-carry in their own bar.²⁶⁶

Without question, the State *does* have a governmental interest in upholding the rights of local churches as private property owners. However, the way the State may achieve that governmental interest is by giving the Church *as a private property owner* the choice of whether to allow concealed-carried weapons on the property and not preempting that decision for the Church. The State has no legitimate *governmental* interest

263. Hudson & Adams, *supra* note 27, at 152 (emphasis added).

264. *GeorgiaCarry.Org, Inc. v. Georgia*, 687 F.3d 1244, 1266 (11th Cir 2012).

265. *Id.* 1261 n.36 (“The plain language of the Carry Law belies any argument that all firearms are per se prohibited from a place of worship; quite simply, this is not the ‘ban’ that Plaintiffs make it out to be.”).

266. GA. CODE ANN. § 16-11-127(6) (West, Westlaw through 2013 Legis. Sess.) (Concealed-carry prohibited “in a bar, unless the owner of the bar permits the carrying of weapons or long guns by license holders.”).

in proscribing or regulating the possession of weapons on private property belonging to the Church.

E. *Strict Scrutiny Review and the Free Exercise Clause*

Under the compelling interest or “strict scrutiny” review, most state weapon laws do not *facially* discriminate against religion generally, or apply to some religions and not others. Thus, the *text* of the statutes usually does not help divine the “object of the law,” apart from the rare statute that only mentions “churches” and no other house of worship. North Dakota’s ban on weapons in public gatherings applies to “churches or church functions” only.²⁶⁷ A Free Exercise challenge to North Dakota’s statute may be plausible because “public gatherings” are limited to “churches or church functions,” thus selectively disarming churchgoers only. North Dakota’s law leaves persons of other faiths who do not worship in churches free to bear arms in their public gatherings. Churchgoers in North Dakota may have a valid Free Exercise challenge to this law that *facially* applies only to churches and does not burden other religious faiths. In addition, the plain text of the Second Amendment prohibits such selective disarmament of certain groups or subsets of people, as the right to bear arms is held by “the people,” not certain classes or groups of people only.²⁶⁸

In the *GeorgiaCarry.Org* lawsuit, the Baptist Tabernacle plaintiffs argued that Georgia’s carry law violated the First Amendment because it

267. See N.D. CENT. CODE § 62.1-02-05(1) (West, Westlaw through 2013 Legis. Sess.).

268. See *District of Columbia v. Heller*, 554 U.S. 570, 580–81 (2008) (“[I]n all six other provisions of the Constitution that mention ‘the people,’ the term unambiguously refers to all members of the political community, not an unspecified subset. . . . Reading the Second Amendment as protecting only the right to ‘keep and bear Arms’ in an organized militia therefore fits poorly with the operative clause’s description of the holder of that right as ‘the people.’ We start therefore with a strong presumption that the Second Amendment right is exercised individually and belongs to all Americans.”). This type of selective disarmament dates in modern history at least to the Stuart monarchs of Scotland and England. The English Bill of Rights sought to remedy this, in which the English Parliament declared the rights and liberties of Englishmen because “the late King James the Second . . . did endeavour (sic) to subvert and extirpate the Protestant religion and the laws and liberties of this kingdom . . . [b]y causing several good subjects being Protestants to be disarmed at the same time when papists were both armed and employed contrary to law[.]” Parliament declared “[]as their ancestors in like case have usually done[.] for the vindicating and asserting their ancient rights and liberties . . . [t]hat the subjects which are Protestants may have arms for their defence (sic) suitable to their conditions and as allowed by law[.]” *An Act Declaring the Rights and Liberties of the Subject and Settling the Succession of the Crown*, ENGLISH BILL OF RIGHTS 1689, available at http://avalon.law.yale.edu/17th_century/england.asp.

specifically targeted religion. The plaintiffs argued that attending a place of worship is religiously motivated conduct, and Georgia's carry law targeted that religious conduct:

"Government action is not neutral and generally applicable if it burdens . . . religiously motivated conduct but exempts substantially comparable conduct that is not religiously motivated." *McTernan v. City of York*, 564 F. 3d 636, 647 (3rd Cir. 2009). A law is not generally applicable "if it proscribes particular conduct only or primarily religiously motivated." *Tenaflly Eruv Association v. Borough of Tenaflly*, 309 F. 3d 144, 165 (3d Cir. 2002). While there may be some secular reasons why a person would go to a place of worship, Georgia cannot reasonably dispute that going to a place of worship is primarily religiously motivated, and therefore the challenged Georgia law is not neutral. . . .

"When a law that burdens religion is not neutral or not of general application, strict scrutiny applies and the government action violates the Free Exercise Clause unless it is narrowly tailored to advance a compelling government interest." *McTernan*, 564 F.3d at 647. Georgia cannot possibly articulate a compelling government interest in burdening religion in this way. The policy of leaving worshippers defenseless against aggression or persecution is unconscionable. There can be no governmental interest in either burdening or favoring religion. Even if such an interest existed, disarming all who enter a place of worship, indiscriminately, is not a tailored measure at all, and certainly is not a narrowly tailored one.²⁶⁹

The Baptist Tabernacle's arguments about Georgia's carry law burdening religiously motivated conduct did not persuade the court, which held that the plaintiffs' Free Exercise Clause claim failed because they did not show "how the Carry Law burdens a sincerely held religious belief."²⁷⁰ Though the court's analysis did not reach the issue whether Georgia's carry law burdened religion as the Baptist Tabernacle alleged, future challengers to such weapon laws need to be prepared to explain that such laws burden

269. Brief for Appellants at 15, *GeorgiaCarry.Org v. Georgia*, 687 F.3d 1244 (11th Cir. 2012) (No. 11-10387), available at http://www.georgiacarry.com/state/places_of_worship/Brief%20of%20Appellant.pdf.

270. *GeorgiaCarry.Org*, 687 F.3d at 1255.

the free exercise of religion. This Article takes up that subject in Part VII, *infra*.

Another way to demonstrate that such laws impermissibly burden religion is to show that the *effect* of statutes in “real operation” evidences an impermissible object under the First Amendment. “At a minimum, the protections of the Free Exercise Clause pertain if the law at issue discriminates against some or all religious beliefs or regulates or prohibits conduct because it is undertaken for religious reasons.”²⁷¹ Weapon laws aimed at the Church operate to regulate or prohibit conduct undertaken for religious reasons. These laws prohibit certain worshippers who cling to their guns and religion from attending religious worship, thus interfering with their free exercise of religion. Weapon laws aimed at the Church create a Hobson’s choice²⁷² between two inalienable, natural rights: The right to worship Almighty God and the right to bear arms in self defense.²⁷³ Such weapon laws “force[] [churchgoers] to choose between following the precepts of [their] religion and forfeiting [rights], on the one hand, and abandoning one of the precepts of [their] religion in order to [exercise the right of self defense], on the other hand.”²⁷⁴ One may carry a firearm, or one may

271. *Church of the Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520, 532 (1993).

272. One dictionary defines Hobson’s choice as: “1: an apparently free choice when there is no real alternative. 2: the necessity of accepting one of two or more equally objectionable alternatives.” *Hobson’s Choice*, MERRIAM-WEBSTER, available at <http://www.merriam-webster.com/dictionary/hobson's%20choice>.

273. See *Sherbert v. Verner*, 374 U.S. 398, 404, 83 S.Ct. 1790, 10 L.Ed.2d 965 (1963).

For ‘[i]f the purpose or effect of a law is to impede the observance of one or all religions or is to discriminate invidiously between religions, that law is constitutionally invalid even though the burden may be characterized as being only indirect.’ *Braunfeld v. Brown* 366 U.S. [599, 607 (1961)]. Here, not only is it apparent that appellant’s declared ineligibility for benefits derives solely from the practice of her religion, but the pressure upon her to forego that practice is unmistakable. The ruling forces her to choose between following the precepts of her religion and forfeiting benefits, on the one hand, and abandoning one of the precepts of her religion in order to accept work, on the other hand. Governmental imposition of such a choice puts the same kind of burden upon the free exercise of religion as would a fine imposed against appellant for her Saturday worship.

Id. The right to bear arms in self-defense and defense of others is an inalienable right; this right is the necessary consequence of our inalienable right to life. If one has the inalienable right to life, one must also have the right to use certain means to defend one’s life—like a Ruger or a Glock.

274. *Sherbert*, 374 U.S. at 404.

worship God in church. However, one dare not worship God in church and carry a firearm simultaneously, upon pain of a misdemeanor or a felony—in some states. The Hobson's choice created by the effect of such laws operates to burden and prohibit conduct undertaken for religious reasons and run afoul of the First Amendment.²⁷⁵

Thus, weapon laws aimed at the Church are not neutral and generally applicable because these laws burden the religiously motivated conduct of attending worship but exempt comparable conduct that is not motivated by religion, such as bearing a weapon on private property where large groups gather, such as civic clubs, charitable societies, and fraternal organizations. A naysayer might respond that the prohibited conduct is that of carrying weapons in certain enumerated areas, not specifically barring one's attendance in the church. The fact that the State enumerates a lengthy list of locations where weapons are banned still has the effect of regulating or prohibiting conduct undertaken for religious reasons in the church. However, in order to even state a plausible First Amendment claim, challengers to such weapon laws must show *the conduct of carrying a weapon* into the church is undertaken for religious reasons, not simply secular reasons, such as personal preference, machismo, or general self-defense. There are no First Amendment protections for personal preferences, secular beliefs, machismo, or general self-defense.²⁷⁶

Thus, under current Supreme Court jurisprudence, a Free Exercise clause challenge to weapon laws aimed at the Church may be plausible under the "strict scrutiny" or compelling interest balancing test. The Church and churchgoers must show that the effect of the law infringes upon and restricts the right to bears arms in the church and that this conduct of bearing arms in the church is undertaken for religious reasons. As a jurisdictional challenge to weapon laws aimed at the Church depends upon the Church's leadership actually acting upon that autonomous jurisdiction, so the plausibility of a Free Exercise challenge under current Supreme Court jurisprudence depends upon one's religious beliefs about armed self-defense and carrying a weapon in the church.

275. *Lukumi*, 508 U.S. at 532.

276. *Georgia Carry, Org.*, 687 F.3d at 1258. Although there are some state constitutional protections for self-defense, these protections are not constitutionally part of religious freedoms clauses. See generally, *State Gun Laws*, NATIONAL RIFLE ASSOCIATION, available at <http://www.nra.org/gun-laws/state-laws.aspx>.

VII. A BIBLICAL DEFENSE OF ARMED SELF-DEFENSE

A biblical defense of self-defense has already been crafted. Rev. Samuel Rutherford's classic work *Lex, Rex, or The Law and the Prince* is a good place to start.²⁷⁷ *Lex, Rex* is partly subtitled "The Reasons and Causes of the Most Necessary Defensive Wars of the Kingdom of Scotland." Question XXXI in *Lex, Rex* asks, "Whether or no self-defence against any unjust violence offered to the life, be warranted by God's law, and the law of nature and nations."²⁷⁸ Rutherford explains that a private man may defend himself *first* by supplications and apologies, *second* by flight, and *third* by armed self-defense. However, at some times neither supplication nor flight is a lawful means of defense:

[W]hen . . . flight, is not possible, and cannot attain the end, as in the case of David: if flight do not prevail, Goliath's sword and an host of armed men are lawful. So, to a church and a community of protestants, men, women, aged, sucking children, sick, and diseased, who are pressed either to be killed or forsake religion and Jesus Christ, flight is not the second mean, nor a mean at all, because not possible, and therefore not a natural mean of preservation; for the aged, the sick, and sucking infants, and sound religion in the posterity cannot flee; flight here is physically, and by nature's necessity, impossible, and therefore no lawful mean. . . . I see not how natural defense [sic] can put us to flee, even all protestants and their seed, and the weak and the sick, whom we are obliged to defend as ourselves, both by the law of nature and grace.²⁷⁹

Rutherford continues:

[F]or the law saith, "Thou shalt love thy neighbor as thyself." . . . It is true I am to love the salvation of the church, it cometh nearer to God's glory, more than my own salvation, as the wishes of Moses and Paul do prove; and I am to love the salvation of my brother more than my own temporal life; but I am to love my own temporal life more than the life of any other, and therefore, I am rather to kill than be killed, the exigence of necessity so requiring. . . . [R]ather than the wife or children should be killed;

277. RUTHERFORD, *supra* note 208.

278. *Id.* at 159–66.

279. *Id.* at 160.

yea, he that his [sic] wanting to his brother, (if a robber unjustly invade his brother,) and helpeth him not, is a murderer of his brother, so far God's spiritual law requiring both conservation of it [life] in our person, and preservation [of it] in others.²⁸⁰

Rutherford explained that private defense is allowable when (1) the violence is sudden; (2) the violence is manifestly inevitable; (3) the magistrate is absent and cannot help; and (4) moderation is kept "as the lawyers require."²⁸¹ These principles apply to the Church and whole congregations, as Rutherford makes clear.

For modern primers on this subject, Larry Pratt of the Gun Owners of America provided a good introduction on what the Bible says about weapons and gun control.²⁸² A key point Pratt raises is from the Proverbs: "A righteous man who falters before the wicked is like a murky spring and a polluted well."²⁸³ Pratt explains that "we would be faltering before the wicked if we chose to be unarmed and unable to resist an assailant who might be threatening our life. In other words, we have no right to hand over our life which is a gift from God to the unrighteous."²⁸⁴ In a similar way, Dave Kopel, in *The Torah and Self-Defense*, expounded upon the right and duty to defend oneself and others, as seen in the narrative portions and the laws of God in the Torah.²⁸⁵

The Bible offers several noted examples of men prepared to exercise self-defense and defend their families, the weak, and the helpless. God's people of old were encouraged to "[b]e not ye afraid of them: remember the Lord, which is great and terrible, and fight for your brethren, your sons, and your daughters, your wives, and your houses."²⁸⁶ Psalm 94 asks, "Who will rise up for me against the evildoers? or who will stand up for me against the workers of iniquity? Unless the LORD had been my help, my soul had

280. *Id.* at 162–63.

281. *Id.* at 163.

282. Larry Pratt, *What the Bible Says About Gun Control*, GUN OWNERS OF AMERICA, available at <http://gunowners.org/fs9902.htm>.

283. *Id.* at *3.

284. *Id.*

285. David B. Kopel, *The Torah and Self-Defense*, 109 PENN ST. L. REV. 17 (2004). See also, DAVID KOPEL, RETURN FIRE: THE MORALS OF SELF-DEFENSE (2004) (Surveying a variety of faiths and religious texts that support the right of self-defense).

286. *Nehemiah* 4:14 (King James).

almost dwelt in silence.”²⁸⁷ Moreover, the priests of Nob kept Goliath’s sword near their priestly vestments:

And David said unto Ahimelech, And is there not here under thine hand spear or sword? . . . And the priest said, The sword of Goliath the Philistine, whom thou slewest in the valley of Elah, behold, it is here wrapped in a cloth behind the ephod: if thou wilt take that, take it: for there is no other save that here. And David said, There is none like that; give it me.²⁸⁸

For a concise biblical case for self-defense, the Catholic Catechism offers a good example of how Christians might justify a sincere religious belief for the practice of carrying concealed weapons in church. The Catholic Catechism provides the following teaching about “Legitimate Defense.”

The legitimate defense of persons and societies is not an exception to the prohibition against the murder of the innocent that constitutes intentional killing. “The act of self-defense can have a double effect: the preservation of one’s own life; and the killing of the aggressor. . . . [T]he one is intended, the other is not.”

Love toward oneself remains a fundamental principle of morality. Therefore it is legitimate to insist on respect for one’s own right to life. Someone who defends his life is not guilty of murder even if he is forced to deal his aggressor a lethal blow:

If a man in self-defense uses more than necessary violence, it will be unlawful: whereas if he repels force with moderation, his defense will be lawful. . . . Nor is it necessary for salvation that a man omit the act of moderate self-defense to avoid killing the other man, since one is bound to take more care of one’s own life than of another’s.

Legitimate defense can be not only a right but a grave duty for someone responsible for another’s life. Preserving the common good requires rendering the unjust aggressor unable to inflict harm. To this end, those holding legitimate authority have

287. *Psalm* 94:16–17 (King James).

288. *1 Samuel* 21:8–9 (King James).

the right to repel by armed force aggressors against the civil community entrusted to their charge.²⁸⁹

A number of Presbyterian, Calvinist, and Reformed churches subscribe to the Westminster Standards and could employ the Westminster Larger Catechism to establish a religious defense of self-defense in the Church. The Larger Catechism teaches that as part of the duties required in the Sixth Commandment, Christians are required through “all careful studies, and lawful endeavors, to preserve the life of ourselves and others, by resisting all thoughts and purposes, subduing all passions, and avoiding all occasions, temptations, and practices, which tend to the unjust taking away the life of any; by just defence thereof against violence . . . comforting and succouring the distressed, and protecting and defending the innocent.”²⁹⁰ The Catechism cited the following Scriptural proofs for some of the above propositions:

Psalm 82:4. Deliver the poor and needy: rid them out of the hand of the wicked.

.....

Proverbs 24:11–12. If thou forbear to deliver them that are drawn unto death, and those that are ready to be slain; If thou sayest, Behold, we knew it not; doth not he that pondereth the heart consider it? and he that keepeth thy soul, doth not he know it? and shall not he render to every man according to his works?

.....

Proverbs 31:8–9. Open thy mouth for the dumb in the cause of all such as are appointed to destruction. Open thy mouth, judge righteously, and plead the cause of the poor and needy.²⁹¹

In other words, Christians have a religious duty to protect and defend innocent life from the hands of wicked men; this religious duty requires all careful studies and lawful endeavors to avoid all occasions and practices “which tend to the unjust taking away the life of any.” Thus, carrying a concealed weapon in a place of worship may fulfill this religious duty to protect and defend innocent life—“those that are ready to be slain.” This duty to defend our own lives and others requires *careful studies*—in other

289. THE CATECHISM OF THE CATHOLIC CHURCH, §§ 2263–2265 (citing St. Thomas Aquinas, *Summa Theologicae*, II–II, 64, 7, corp. art., available at http://www.vatican.va/archive/ENG0015/_P7Z.HTM#-2BX).

290. *Westminster Larger Catechism*, Q/A 135 (Rev. ed. 1960).

291. *Id.* Q/A 136.

words, regular target practice and tactical weapons training—but not at the behest of the State.

The Catechism also lists the sins forbidden in the Sixth Commandment as “all taking away the life of ourselves, or of others, except in case of . . . necessary defence; the neglecting or withdrawing the lawful and necessary means of preservation of life . . . and whatsoever else tends to the destruction of the life of any.”²⁹² The Catechism cites *Jeremiah* 48:10, which says, “Cursed be he that doeth the work of the LORD deceitfully, and cursed be he that keepeth back his sword from blood.”²⁹³ The Catechism also quotes *Exodus* 22:2, which says, “If a thief be found breaking up, and be smitten that he die, there shall no blood be shed for him.”²⁹⁴ The next verse continues, “If the sun be risen upon him, there shall be blood shed for him; for he should make full restitution; if he have nothing, then he shall be sold for his theft.”²⁹⁵

At times, one who keeps his weapon from bloodshed or willfully refuses to prepare for necessary armed defense incurs God’s curse. Samuel Davies, the renowned orator, educator, Presbyterian evangelist of the First Great Awakening, and pastor of Patrick Henry, took this view.²⁹⁶ In a 1758 sermon to the militia of Hanover County, Virginia, on the text of *Jeremiah* 48:10, he said: “This denunciation, like the artillery of heaven, is leveled against the mean, sneaking coward who, when God, in the course of His providence, calls him to arms, refuses to obey and consults his own ease and safety more than his duty to God and his country.”²⁹⁷ Similarly, one breaks the Sixth Commandment by cowardly neglecting the lawful means of preservation of life, such as carrying a weapon for self-defense. Carrying a concealed weapon in the church is certainly a lawful means of preserving life and guarding against what tends to destroy life—i.e., unanticipated violence.

292. *Id.*

293. *Jeremiah* 48:10 (King James).

294. *Exodus* 22:2 (King James).

295. *Exodus* 22:3 (King James).

296. GARY AMOS & RICHARD GARDINER, NEVER BEFORE IN HISTORY: AMERICA’S INSPIRED BIRTH 56 (2011).

297. Samuel Davies, *The Curse of Cowardice* (1758), in 2 ANNALS OF AMERICA 23–28 (1976). Davies’ sermon had its intended effect—so many recruits enlisted that some had to be turned away. *See id.* at 23.

Likewise, today, God's denunciation is leveled against men who, in God's providence, are called to defend the Church and their families in the church but refuse this call, instead consulting their own ease and safety.

VIII. CONCLUSION: TAKE YOUR GUNS TO CHURCH

For church leaders: instruct your flock to take their guns to church. The Church's leaders must reject statist usurpations into the Church's sanctuaries and create specific, internal plans for armed congregational defense, which may include directives for firearms storage, tactical training, and congregational notification, a determination of who *enters* the sanctuary, under what terms, and in what manner, and a plan to guard its sanctuaries from the State's efforts at disarming both church members and church leadership.

For church members: take your guns to church. First, defend the right of armed self-defense in the church by developing comprehensive biblical convictions on this subject. Your life—and the life of your family members and your brothers and sisters in Christ—may depend upon it. Second, defend armed self-defense in the church by honoring your church leaders' decisions and policies regarding weapons in the sanctuary.²⁹⁸ If you cannot do so, it may be high time to find another church family, one where the pastors and leaders do not disarm the flock of God and thus make them the prey of wicked men.²⁹⁹ Third, defend armed self-defense in the church with a no-compromise stand on the text and history of the Second Amendment—a history which traces the scope of the right to bear arms in the church to 1619, 12 years after the settlement of Jamestown, one year before the Pilgrim landing at Plymouth.³⁰⁰ Fourth, you *may* defend armed self-defense in the church with an appeal to Free Exercise balancing tests.

298. Though the State does not have jurisdiction over the presence of weapons in the Church, the Church certainly has jurisdiction over the presence of *your* weapons in the sanctuary.

299. Church government has disarmed the flock of God too, but this is an issue beyond the scope of this Article. This is just as bad as the State disarming the Church. Church leaders have authority in matters of church security. However, if church leaders misuse their authority and start behaving like tyrants . . . “surely because my flock became a prey, and my flock became meat to every beast of the field, because there was no shepherd, neither did my shepherds search for my flock, but the shepherds fed themselves, and fed not my flock.” Ezekiel 34:8 (King James) (emphasis added).

300. In 1619, Virginia law “required everyone to attend church on the Sabbath, ‘and all suche as beare armes shall bring their pieces, swords, powder and shotte.’” Cranmer, *supra* note 244, at *7.

However, the argument based on modern jurisprudence must be advanced along a *Heller*-type First Amendment claim based on the constitutional text and history. Finally, first and last, defend the right of armed self-defense in the Church by developing comprehensive biblical convictions on this subject, for in certain times, “[a]n appeal to arms and to the God of hosts is all that is left us!”³⁰¹

301. See AMOS & GARDINER, *supra* note 296, at 142 (quoting Patrick Henry’s Speech, Richmond, Virginia, Mar. 23, 1775).