SANE GUN POLICY FROM TEXAS?
A BLUEPRINT FOR BALANCED
STATE CAMPUS CARRY LAWS

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SANE GUN POLICY FROM TEXAS?
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Aric Short*

Abstract

American universities are caught in the crosshairs of one of the most polarizing and contentious gun policy debates: whether to allow concealed carry on campus. Ten states have implemented “campus carry” in some form; sixteen new states considered passage last year; and a growing wave of momentum is building in favor of additional adoptions. Despite this push towards campus carry, most states adopting the policy fail to strike an effective balance between the competing rights and interests involved. When states give universities the option to opt out of the law, for example, they almost always do. Other states impose a rigid campus carry framework on universities, denying them the ability to customize implementation. The recent Texas campus carry law, in contrast, carves out a unique and effective middle ground: it requires public universities to allow concealed handguns on campus, but it empowers each university to adopt meaningful firearms policies, including the identification of campus-specific gun-free zones, based on that school’s unique operations and safety concerns.

This Article explores the Texas law as a model for other states considering campus carry. First, as context, the Article examines recent data on campus crime and the impact of liberalized gun laws on crime rates. Notwithstanding the safety arguments of gun-rights advocates, studies within the past year have proven that a proliferation of guns results in increased crime rates. Second, this Article surveys the other nine states that have adopted some form of campus carry, highlighting the flexibility and rigidity of each state’s approach. Third, the Article explores the Texas law, in particular: its history, structural framework, and implementation by Texas universities. Finally, the article closes with conclusions from the early stages.

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of adoption in Texas, emphasizing that the Texas law and its implementation provide a valuable blueprint for other states choosing campus carry.

I. INTRODUCTION

At 2:21 p.m. on February 14, 2018, a nineteen-year old, carrying an AR-15 assault rifle and a backpack full of ammunition, walked into the Parkland, Florida high school that had recently expelled him and opened fire. ¹ Six minutes later, the slaughter was over. Twelve victims died inside the school building; two just outside; one in a nearby street; and two at a local hospital. ² In all, seventeen students, teachers, and staff were dead, and many more were injured. ³ The Parkland, Florida attack is the eighth deadliest school shooting in U.S. history, ⁴ and it was the sixth school shooting in 2018

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¹ Richard Fausset, Serge F. Kovaleski, and Patricia Mazzei, On a Day Like Any Other at a Florida School, 6 Minutes of Death and Chaos, N.Y. TIMES (February 16, 2018).
³ Kaitlyn Schalhorn, Parkland Shooting Victims Include Young Students, Coach Who Saved Others in Florida High School, FOX NEWS (February 20, 2018).
⁴ Florida School Shooting, supra note ___.

Sane Gun Policy from Texas?

resulting in either physical injury or death.\(^5\)

The Parkland shooting revived a number of challenging gun policy debates, most of which focus on campus safety. The President of the United States rushed into the fray by arguing that school teachers should receive pay bonuses for carrying firearms in the classroom.\(^6\) Teachers with guns, he maintained, would step in to save their students by confronting and killing any violent intruder.\(^7\) With armed teachers randomly scattered around schools, campuses would transform from soft targets to being fortified, and criminals would consciously avoid them.\(^8\) The President took this position despite the fact that an armed security guard employed by the high school, as well as at least three Broward County Sheriff’s deputies were present on campus at the time of the shooting.\(^9\)

The President’s comments on arming teachers represent the latest version of statements made in 2012 by the president of the National Rifle Association (NRA) following the killing of twenty-six people at a school in Newtown, Connecticut. Resisting calls for increased gun regulations in response to that tragedy, the NRA president stated, “The only way to stop a bad guy with a gun is with a good guy with a gun.”\(^10\) In particular, he advocated for the hiring of armed security guards at every school in the United States.\(^11\) Since then, the “good guy with a gun” has been a powerful image invoked to support a particular position on addressing violent crime. We become safer, the argument goes, if we put more guns in the hands of more people who are law-abiding and trustworthy; they will react quickly and effectively if confronted with an armed assailant.

The “good guy with a gun” approach to safety has been applied in a wide range of settings outside the elementary or high school context. Perhaps nowhere has this argument been advanced more passionately or successfully than in the context of debates over “campus carry,” or the carrying of concealed firearms on college campuses. Those advocating for campus carry

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7 Id.

8 Id.


10 Meghan Keneally, *Breaking Down the NRA-Backed Theory That a Good Guy with a Gun Stops a Bad Guy with a Gun*, ABC NEWS (February 27, 2018).

point to a fundamental right in the Second Amendment to have a firearm in their possession wherever they go, including on campuses. But the real heart of the pro-campus carry argument typically lies in the concept of safety. Acts of violence on campus occur frequently and quickly, with no time for even fast-reacting first responders to defuse the situation. Instead, law-abiding citizens should be allowed to carry their weapons into classrooms, dormitories, cafeterias, and faculty offices so they are ready to respond immediately when a threat arises, thereby protecting themselves and all of the potential victims around them.

Texas governor Greg Abbott made this point recently after an Ohio State University student, inspired by ISIS terrorist propaganda, careened his Honda Civic onto a university sidewalk filled with people in Columbus, Ohio.\(^{12}\) After crashing into the crowd, the driver began attacking terrified students with a butcher knife.\(^{13}\) At least one bystander tried and failed to disarm the attacker, getting slashed in the process.\(^{14}\) Soon after, the perpetrator of these crimes was shot and killed by a policeman who was fortuitously in the area on another call,\(^{15}\) but not before thirteen people were injured in an attack that lasted approximately two minutes.\(^{16}\) In response to this attack, Gov. Abbott remarked, “It’s instances like this where kids on campus can have guns [so] they could have been able to respond initially. On a college campus [ ] here in Texas, people will think twice before waging an attack like this knowing that they could be gunned down immediately.”\(^{17}\)

\(^{12}\) Mitch Smith, Richard Perez-Pena, and Adam Goldman, Suspect is Killed in Attack at Ohio State University That Injured 11, N.Y. TIMES, November 29, 2016; Kathy Lynn Gray, Susan Svruluga, Mark Berman, and Matt Zapotosky, Ohio State Student Identified as Campus Attacker; Nearly a Dozen Hospitalized, WASHINGTON POST, November 28, 2016.


\(^{17}\) Lauren McGaughey, Abbott Says Campus Carry Will Make Attackers “Think Twice” About Targeting Texas Schools, DALLAS NEWS, November 29, 2016. The Governor’s provocative comments received immediate attention, including from J. Blair Blackburn, then-President of East Texas Baptist University: “[w]e cannot assume that the mere possession of a concealed carry weapon is going to prevent someone from launching a terrorist attack or an isolated active shooter incident.” Christina Lane, ETBU President
The Texas law that would force would-be attackers to “think twice,” according to Gov. Abbott, was less than four months old at the time. Effective August 1, 2016 for four-year universities and August 1, 2017 for community colleges, this new law was the most recent state level victory for gun rights advocates in an ongoing battle that has placed college campuses in the crosshairs. Under the Texas version of “campus carry,” all individuals who hold state-issued handgun licenses, which allow them to carry their weapons openly in public, are also authorized to carry their weapons in a concealed manner on public college campuses. The new law was controversial, and it passed the Texas Legislature in 2015 after years of failed attempts to enact similar bills.

When its law went into effect, fifty years after the first U.S. campus mass shooting at the University of Texas in Austin (UT Austin), Texas was the eighth state to explicitly authorize campus carry by statute or court decision. Two additional states have followed since then, and now over 200 universities across the country allow campus carry. In addition, the last several years have seen a flurry of legislative efforts to pass similar laws in other states, with a clear wave of momentum in favor of campus carry. With the one-year anniversary of full enactment of the Texas law approaching, it is useful to reflect on the law’s impact and how it has been implemented.

There is particular value in analyzing the Texas statutory framework because of its unique structure. In other states that have adopted campus carry, the framework is usually rigid and standardized, sometimes allowing entire campuses to opt out, but providing little, if any, flexibility in implementation for individual campuses. In Texas, in contrast, the president of each university is empowered to promulgate firearms regulations, including the creation of handgun exclusion zones, based on that campus’s unique operations, population, and safety considerations. By including this flexibility, Texas introduced a degree of balance and discretion absent in other states’ campus carry schemes. This approach provides an intriguing

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18 Ben Wofford, Inside the Fight Over Guns on Campus, ROLLING STONE (March 30, 2017) (hereinafter Inside the Fight).
20 Inside the Fight, supra note ___.
21 TEX. GOV’T CODE § 411.2031(d-1). As described below, this discretion is not absolute. The Board of Regents for each university must review the president’s implementation rules and has the power to revise those rules, in whole or in part, by a two-thirds vote. See infra at ___ and accompanying text.
middle ground in the contentious debate about guns on college campuses.

But a middle ground may not be palatable to all. Those strongly opposed to guns on campus will reject even customizable concealed carry at universities, and those who argue for unfettered campus carry bridle at what might appear to others to be reasonable restrictions. This article does not take a normative position on whether allowing concealed carry on campus is good policy, although it does open with a brief discussion of data addressing whether campus carry, in particular, and more relaxed gun laws, in general, result in increased safety.  

Instead, it takes as a given that the campus carry movement has been in full swing for the past ten years, and that interest group pressure and the political will are generating what seems to be an unavoidable march towards new campus carry bills in a number of states. And because no federal law governs this issue, each state choosing to implement campus carry is left to navigate its own way. The question, then, may not be whether campus carry will continue to expand across the country, but what form should it take when it does expand?

Standing in the middle of emotionally charged debates about guns on campus, universities confront entrenched and unyielding interests on all sides. Chancellors, faculty, parents, administrators, and most students

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22 Arguments in favor of and in opposition to relaxed gun laws, in general, and campus carry, in particular, have been extensively explored in other contexts. See, e.g., Comment: Where Do I Put My Gun?: Understanding the Texas Concealed Handgun Law and the Licensed Owner’s Right-to-Carry, 6 TEX. TECH J. ADMIN. L. 139, 143 (2005); Brian J. Siebel, The Case Against Guns on Campus, 18 CIVIL RIGHTS L. J. 319 (2008); and Brian Vasek, Rethinking the Nevada Campus Protection Act: Future Challenges & Reaching a Legislative Compromise, 15 NEVADA L.J. 389, 399-406 (2014). In addition, a large number of organizations and associations have taken positions on this issue, both officially and unofficially. See, e.g., The American Association of University Professors, Joint Statement Opposing “Campus Carry” Laws (November 12, 2015) (signed also by the American Federation of Teachers, the Association of American Colleges and Universities, and the Association of Governing Boards of Universities and Colleges) (opposed); the National Behavioral Intervention Team Association, Concealed Carry Legislation Related to Mass Shootings (opposed); the International Association of Campus Law Enforcement Administrators, Inc., Position Statement – Concealed Carrying of Firearms – Proposals on College Campuses (August 12, 2008) (opposed); American Psychiatric Association, Position Statement on Proposed Legislation Permitting Guns on College and University Campuses (May 2011) (opposed); Association of Title IX Administrators, Position Statement on Concealed Carry Legislation Related to Campus Sexual Violence (opposed).

23 See infra at ___ and accompanying notes.

24 Kerry Brian Melear & Mark St. Louis, Concealed Carry Legislation and Changing Campus Policies, in COLLEGE IN THE CROSSHAIRS – AN ADMINISTRATIVE PERSPECTIVE ON PREVENTION OF GUN VIOLENCE 59 (Brandi Hephner LaBanc & Brian O. Hemphill eds., 2015) (hereinafter Concealed Carry Legislation and Changing Campus Policies)

25 Id.

26 See, e.g., Concealed Carry Legislation and Changing Campus Policies, supra note
usually strongly oppose campus carry, as do many police officers. Opponents cite concerns about accidental gun discharges; the danger of mixing firearms with the high stress of college, even without the addition of drugs, alcohol, depression, and anxiety, which are widespread in college; the chilling of academic freedom caused by guns in the classroom; and the problems that “good guys with guns” pose for first responders in an active shooter scenario. On the other hand, universities, through their state legislatures, are facing increasing pressure from powerful gun lobby groups and some gun owners who cite a concern about personal safety and a demand that their Second Amendment rights be respected on college campuses. All of these pressures make the college campus, according to one expert, “the fundamental battleground over guns and self-defense.”

In the face of these seemingly irreconcilable and hopelessly entrenched positions, perhaps an all-or-nothing approach to guns on campus does not adequately balance the rights and interests involved. Instead, a more nuanced approach to campus carry, one that allows for discretion and flexibility in implementation, may be a productive way forward. This article analyzes the new Texas law as just such a potential model for other states considering the implementation of campus carry. As context, Part II provides a brief overview of the current state of campus safety in the United States, as well as a look at recent studies analyzing the actual safety impact of relaxed gun possession laws. As this recent data demonstrates, liberalized gun laws undermine public safety. Part III traces the development of campus carry laws and describes their legal structure in states that allow it. Part IV discusses the Texas law: the overall context of gun rights in Texas, an historical look at enactment of campus carry in the state, and the details of the Texas campus carry law. Part IV also looks at which Texas universities

___ (citing data that approximately 80% of students at Midwestern universities oppose campus carry). One of the more colorful student campaigns opposing campus carry was, “Cocks Not Glocks,” organized by students at UT Austin. The campaign encouraged students, faculty, and staff to publicly carry dildos on campus, offering “a multicolored counterpoint to the concealed weapons” that also can also be carried on campus. See Alex Samuels, “UT-Austin Students Snatch Up Free Dildos for Gun Protest, Texas Tribune, August 23, 2016 (reporting on an event in Austin that distributed 4,500 free dildos). https://www.texastribune.org/2016/08/23/students-distribute-4500-sex-toys/. Rolling Stone described one protest: “Students gathered under the UT Tower, as young women tossed dildos with the frenzy of a humanitarian mission. ‘If they're packing heat,’ one sophomore protester yelled, hoisting a giant dildo with both hands, ‘then we're packing meat!’” Inside the Fight, supra note ___.

27 Concealed Carry Legislation and Changing Campus Policies, supra note ____ (noting that in 2013, 95% of university presidents opposed campus carry); Inside the Fight, supra note ___; See Dave Phillips, What University of Texas Campus is Saying About Concealed Guns, N.Y. TIMES (August 27, 2016).

28 Inside the Fight, supra note ___ (quoting Adam Winkler).
have opted out of the law and how other universities have implemented it, focusing on common themes and areas of disagreement. Part IV concludes with observations about the early stages of campus carry adoption in Texas. As described in more detail below, the Texas version of campus carry provides a useful blueprint for other states that will be adopting legislation to allow firearms on campus. Texas universities have implemented the new law with regulations that customize campus carry for their unique campus needs and operations. In doing so, they have successfully created firearms policies that respect the underlying right of license holders to carry concealed weapons on campus while, at the same time, regulating firearms, including the creation of gun-free zones based on each university’s unique operations. And Texas universities have struck this delicate balance with relatively little administrative expense or difficulty.

II. CAMPUS CRIME, RELAXED GUN LAWS, AND PUBLIC SAFETY

The campus carry movement has taken place against a backdrop of generally decreasing crime rates on university campuses.29 Between 2001 and 2006, the year before the campus shootings at Virginia Tech University, which served as the primary impetus for campus carry legislation,30 the total number of on-campus crimes increased across the country by seven percent.31 In 2006, however, the total number of reported crimes on college campuses began a decline that has lasted to the present day.32 From 2006 to 2014, the number of reported campus crimes declined thirty-nine percent, from 44,500 incidents in 2006 to 27,000 in 2014.33 That represented a drop in criminal incidents per 10,000 students from 35.6 in 2001 to 17.9 in 2014.34 This overall reduction from 2006 to 2014 held true across all types of higher education institutions.35 And from 2001 to 2014, the rate of all crime, other

30 See infra at ___ and accompanying notes.
31 Indicators of School Crime, supra note ___ at 112. During this time period, total enrollment on college campuses also increased, and at a higher rate than the growth in reported crimes. See id. As a result, the number of reported crimes per 10,000 students decreased from 35.6 in 2001 to 33.3 in 2006. See id.
32 Id.
33 Id. Although the total number of reported crimes declined during this timeframe, overall enrollment increased, affecting the statistic of reported crimes per 10,000 students. See id.
34 Id. at 123.
35 Id. at 124. During this period, on-campus crime decreased from 35.5 to 19.6 per 10,000 students at public four-year institutions; from 57.7 to 31.3 per 10,000 students at nonprofit four-year institutions; and from 15.4 to 8.0 per 10,000 students at public two-year institutions. Id.
than forcible sex offenses and negligent homicide, decreased on college campuses.\textsuperscript{36} Simple assaults are typically the most common offense committed on college campuses, with their rates much higher than those of sexual assault, robbery, or aggravated assault.\textsuperscript{37} Homicide rates, in particular, are extremely low on college campuses as compared to the overall homicide rate in society, with .007 homicides per 100,000 students, compared to 5.7 per 100,000 individuals in general society, and 14.1 per 100,000 individuals age seventeen to twenty-nine in general society.\textsuperscript{38}

Despite these overall reductions in crime rates, gun violence in higher education has increased in recent years, from ten incidents in 2001-2002 to twenty-nine incidents in 2015-2016.\textsuperscript{39} The total number of victims killed or wounded in these gun attacks grew substantially, as well, from twenty in 2001-2002 to sixty-four in 2015-2016.\textsuperscript{40}

This general timeframe also saw a “professionalization” of campus police departments,\textsuperscript{41} as universities expended significant resources to keep their student, staff, and faculty populations safe, adding armed officers and police departments, establishing formal relationships with municipal police departments, installing safety equipment throughout campuses, and actively engaging in community awareness and education programs.\textsuperscript{42} In the most recent data available, 95\% of all four-year campuses operated their own campus law enforcement office.\textsuperscript{43} And those offices have been increasingly active. In contrast to the declining rate of crime on college campuses, the number of on-campus arrests between 2001 and 2011 increased from 40,300 to 54,300.\textsuperscript{44} The rate of weapons arrests per 10,000 students has remained

\textsuperscript{36} \textit{Id.} at 122. During that timeframe, the rate of forcible sex offenses on campus climbed from 1.9 to 4.5 per 10,000 students, and the number of negligent homicides remained the same (2 incidents). \textit{See id.} at 122; The National Center for Educational Statistics, \textit{Indicators of School Crime and Safety 2015} at 112 (May 2016).


\textsuperscript{38} Armed Campuses, \textit{Guns on Campus’ Laws for Public Colleges and Universities}, available at \url{http://www.armedcampuses.org/} (citing 1999 data).

\textsuperscript{39} Ashley Cannon, Citizens Crime Comm. of New York City, \textit{Aiming at Students – The College Gun Violence Epidemic} 13-14; 18-20 (2016) (hereinafter “\textit{Aiming at Students}”).

\textsuperscript{40} \textit{Id.}

\textsuperscript{41} \textit{Campus Crime Policy}, supra note ___ at 17.


\textsuperscript{43} \textit{Campus Law Enforcement}, supra note ___ at 21.

\textsuperscript{44} \textit{Indicators of School Crime}, supra note ___ at 124. Since 2011, however, the number has decreased. \textit{See id.}
relatively unchanged from 2001 to 2014, but the rate for drug law violations has increased from 10.2 to 12.8.\textsuperscript{45}

In addition to university police involvement, higher education institutions have been active using their internal administrative procedures to deal with university rule violations. From 2001 to 2014, the number of referrals for disciplinary actions related to weapons, drugs, and liquor violations rose 140\% from 23,900 to 57,400.\textsuperscript{46} Importantly as schools consider how to regulate campus carry, 90\% of the referrals from 2014 related to rule violations occurring in residence halls, with over half involving alcohol.\textsuperscript{47} To some extent, these increases in raw numbers are attributable to increases in overall student populations on campus over the years, but the timeframe 2001 to 2014 saw a significant jump in the rate of disciplinary referrals per 10,000 students for drug violations (20.5 to 38.1) and liquor violations (111.3 to 141.6).\textsuperscript{48}

Against a general backdrop of decreasing crime rates on college campuses, the total number and rate of forcible sex crimes are clear outliers. The raw number of forcible sex crimes reported between 2001 and 2014 rose from 2,200 to 6,700, an increase of 205\%.\textsuperscript{49} Reports of these crimes jumped thirty-four percent in just one year from 5,000 in 2013 to 6,700 in 2014.\textsuperscript{50} Whether these numbers represent an actual increase in sexual assaults on college campuses or an increased willingness to report such crimes, or some combination of those factors, is unclear. However, 26.1\% of college female seniors in a recent study reported having been the victim of sexual contact by force or incapacitation during their undergraduate years.\textsuperscript{51} Other studies have found the rate of sexual assault as high as 38\% among college females at some schools.\textsuperscript{52}

\textsuperscript{45} Id. at 124.
\textsuperscript{46} Id. at 125.
\textsuperscript{47} Id.
\textsuperscript{48} Id. at 125.
\textsuperscript{49} Id. at 122.
\textsuperscript{50} Id. Beginning in 2014, data on “forcible sex crimes” were reported in a more granular way than in prior years. In particular, those crimes were broken down between rape and fondling incidents in 2014, whereas data before 2014 did not include that distinction. In 2014, approximately 4,400 rapes and 2,300 fondling incidents were reported to police. See id. at 122.
\textsuperscript{51} David Cantor, Bonnie Fisher, Susan Chibnall, and Reanee Townsend, The Ass’n of American Universities, Report on the AAU Campus Climate Survey on Sexual Assault and Sexual Misconduct at xii (2015).
\textsuperscript{52} Christopher Krebs, Christine Lindquist, Marcus Berzofsky, Bonnie Shook-Sa, Kimberly Peterson, Michael Planty, Lynn Langton, and Jessica Stroop, Bureau of Justice Statistics Research and Development Series, Campus Climate Survey Validation Study Final Technical Report at 73 (2016). Beyond actual assault, 47.7\% of college students report being the victim of sexual harassment while in school. See Report on the AAU Campus Climate
In light of decreasing reported crime on college campuses, increased campus safety measures being implemented by universities, and increasing numbers of both arrests and disciplinary adjudications by schools, do we have reason to believe that campus carry will make our universities even safer? This may be a difficult question to answer, in part, because of a 1996 amendment to a Congressional spending bill that prohibited the Centers for Disease Control (CDC) from spending money to “advocate or promote gun control.” Although the CDC was not barred from studying gun violence, per se, its funding was reduced by Congress in the amount it had spent on that research. As a result, there has been little public research into this general topic since 1996. However, research conducted outside the CDC may prove informative.

In considering whether campus carry makes our universities safer, it may be useful to look briefly at three of the primary arguments advanced by gun advocates in light of available data: first, that campus carry should be allowed to harden colleges as targets, because mass shootings often take place in soft-target areas that have been designated “gun free zones”; that civilians with firearms are likely to stop an armed attacker; and that more relaxed gun laws lead, in general, to lower crime rates.

First, do mass shooters frequently seek out targets that are gun-free zones to maximize the damage they inflict or decrease the chances that they will be apprehended? A study of the 111 “high-fatality mass shootings,” which involved six or more murdered victims, that have taken place in the United States since 1966 found that only eighteen occurred in a gun-free or gun-restricted zone. Nearly 90% of these mass attacks took place in areas where civilians were allowed to carry firearms or where armed security guards were present. This should not be surprising, as studies usually find that those perpetrating mass shootings are motivated by a desire to lash out because of a specific grievance with individual victims, institutions, or groups of people. In the university mass shooting context—which is extremely

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54 Id.
55 Research by the CDC prior to 1996 had suggested certain connections between guns and violence, such as increased rates of suicide in homes with guns. See id.
57 Id.
58 Id.
rare, in comparison to overall crime rates on college campuses—reports of the motivations of shooters bears this out, as shooters often have a troubled history with the school, itself, or particular students enrolled there. 60

Second, are civilians with concealed weapons likely to stop an armed attacker on campus? Beyond the campus environment, concealed permit holders almost never use their weapons to stop a criminal attack. In a Federal Bureau of Investigation (FBI) report from 2014 analyzing 160 active shooter incidents between 2000 and 2013, armed civilians intervened just once to end the attack, and that situation involved intervention by a U.S. Marine. 61 In comparison, twenty-one of the incidents ended when unarmed citizens “safely and successfully restrained the shooter.” 62

Furthermore, another recent study found that in a country with over 300 million guns, victims of violent crime fail to defend themselves or threaten the perpetrator with a weapon 99.2 percent of the time. 63 In the context of school shootings, that number rises even higher: There has not yet been a school shooting stopped by an armed civilian. 64 One reason more civilians do not respond to violent crime by brandishing a weapon is that doing so effectively, in the heat of emotional chaos, is incredibly difficult, even for trained professionals. Hormones surge, vision narrows, hearing becomes impaired, 65 and the situation is further complicated by factors like distance from the target, lighting, and the mental state of the license holder. 66 When trained law enforcement officers respond with gunfire in the context of a violent crime, they are rarely accurate. In a 2008 RAND Corporation study of the New York Police Department, it was determined that between 1998 and 2006, the hit-rate by officers in gunfights was eighteen percent;

60 Stephanie A. Miller, School Shootings Perpetrators’ Self-Reported Motives: A Qualitative Analysis of Manifetos and Other Writings (2017), available at https://digitalcommons.georgiasouthern.edu/cgi/viewcontent.cgi?article=1327&context=honors-theses (reviewing literature and concluding that a significant number of school shooters felt bullied, harassed, or rejected by fellow students).


62 Id.

63 Right-to-Carry Laws and Violent Crime, supra note ___ at 5 (citing Plany and Truman 2013).

64 Inside the Fight, supra note ___.

65 Nate Rawlings, Ready, Fire, Aim: The Science Behind Police Shooting Bystanders, TIME (September 16, 2013); Minkah Makalani, The Many Costs of Campus Carry, THE NEW YORKER (October 15, 2016) (reporting on a police study simulating armed assailants entering a classroom with armed students; the students were “consistently mowed down in seconds . . . often before [any student] could unholster a gun”).

66 Firearms on College Campuses, supra note ___ at 10.
when the target did not return fire, the hit-rate rose to only thirty percent.\textsuperscript{67} There is no reason to believe that college students, staff, and faculty will respond accurately in an active shooter situation with only minimal state-required training.\textsuperscript{68}

Finally, from a macro perspective, do we have reason to believe that campus carry, as an example of more relaxed gun laws, may reduce crime rates? Studies recently published strongly suggest that more relaxed gun laws do not lead to a reduction in crime; instead, and in contradiction to earlier less-complete reports, they appear to correlate with increased crime over time. In particular, a working paper published in June of 2017 and revised in January of 2018 by the National Bureau of Economic Research (NBER) looked at whether “right to carry” laws decrease crime rates.\textsuperscript{69} A state is considered to be a “right to carry” (RTC) state or a “shall issue” state if its requirements for gun possession do not leave discretion with the permitting agency; that is, a state falls into this category if an applicant for a handgun license must be issued a license if she satisfies all of the statutory requirements in the jurisdiction.\textsuperscript{70} Texas is an RTC state.\textsuperscript{71}

The NBER study used new analytical methods to assess a more robust set of data, from 1979 to 2014 and from thirty-three states, than had earlier studies that purported to show a decrease in crime in RTC states.\textsuperscript{72} Those earlier conclusions, in papers and books, may have helped fuel the initial legislative push for states to adopt RTC laws.\textsuperscript{73} In summary, the recent NBER study found that RTC states had aggregate crime rates seven percent higher after five years, and fourteen percent higher after ten years, than they would have been without the laws.\textsuperscript{74} Texas was a special focus in the report, though its results were consistent with the overall findings. Ten years after adopting its RTC law in 1996, violent crime in the state was nearly seventeen percent higher than it would have been without the law.\textsuperscript{75} While Texas experienced a drop in its violent crime rate of 19.7 percent during the same period, the new modeling in the NBER study concluded that without the RTC law, Texas

\textsuperscript{67} Id.
\textsuperscript{68} Id.
\textsuperscript{71} Right-to-Carry Laws and Violent Crime, supra note ___ at 37.
\textsuperscript{72} Id. at 2.
\textsuperscript{73} Id.
\textsuperscript{74} Id. at 48.
\textsuperscript{75} Id. at 38.
would have experienced a decrease in violent crime of thirty-one percent.\textsuperscript{76}

Little data exists to support the argument that mass shooters seek out gun-free zones for attack, or that civilians are likely to be successful as a “good guy with a gun,” or that more relaxed gun laws lead to lower crime rates. Nevertheless, emotions to the contrary run strong. In particular, there is widespread sentiment that guns on campus make those communities safer. A UT Austin student personalized this view: “I’ll feel much safer after the implementation of [c]ampus [c]arry. . . . I’ll be able to protect myself if the occasion ever arose where I needed a gun in a potentially life or death situation. Being a female, and with the stigma of the high number of sexual assaults on college campuses, I’ll definitely feel much safer with a gun, especially if I’m by myself.”\textsuperscript{77}

III. GUNS ON CAMPUS IN AMERICA

Although campus carry began in Utah in 2004, the movement had its emotional genesis several years later following a mass shooting in Virginia. Since then, it has spread to ten states, from coast to coast, and is being actively considered for adoption in many more.

A. Virginia Tech Rampage and its Aftermath

In April 2007, a senior at Virginia Polytechnic Institute and State University killed two fellow students in a dormitory at 7:15 a.m.\textsuperscript{78} During the following two hours,\textsuperscript{79} the shooter returned to his dorm room, changed clothes, traveled to a nearby post office, mailed a package containing a manifesto, letter, and video clips to NBC News, and then returned to campus.\textsuperscript{80} At approximately 9:15 a.m., he traveled to an engineering building on campus, carrying with him with two handguns and hundreds of rounds of

\footnotesize
\textsuperscript{76}Id.

\textsuperscript{77}Kris Seavers and Ashika Sethi, \textit{We Asked Eight UT Students What They Think About Campus Carry}, AUSTIN MONTHLY, August 1, 2016 (quoting Ashley Brasel). http://www.austinmonthly.com/Austin-Amplified/August-2016/We-Asked-Eight-UT-Students-What-They-Think-About-Campus-Carry/.


\textsuperscript{79}The ensuing two hours appear to have been filled with frustratingly slow and confused responses from law enforcement. \textit{See VIRGINIA TECH PANEL REPORT} at 25. The first Virginia Tech email to the campus community, notifying them of the dorm shootings, was sent at 9:26 a.m. \textit{Id.} 26. First period classes began at 8:00 a.m., and second period classes started at 9:05 a.m. \textit{Id.} at 25-26.

\textsuperscript{80}Id. at 26.
ammunition. After entering the building, the shooter used chains to lock the three main entrances from inside. He then proceeded classroom-to-classroom, shooting professors and students, including through barricaded doors. He lined up some of his victims against classroom walls and shot them one at a time. The shooter continued his slow march through the building, sometimes returning to classrooms he had already attacked, shooting more victims.

Police used a shotgun to blast open a fourth entrance to the building at 9:50 a.m. The shooter killed himself one minute later. During that eleven-minute attack on the students and faculty of Virginia Tech, the shooter fired 174 rounds of ammunition, killed thirty students and faculty, and wounded seventeen more people. In total, thirty-three individuals, including the gunman, died. The Virginia Tech massacre remains the deadliest school shooting in U.S. history, and the second overall deadliest shooting in the United States.

While there had been prior incidents of university shootings, including shootings that resulted in multiple fatalities, the massacre at Virginia Tech in 2007 was “the first rampage in higher education to result in official public scrutiny.” Official commissions at the federal, state, and university levels investigated all aspects of the shootings and identified the various circumstances and failings that existed to allow the tragedies to occur. Beyond official investigations, the Virginia Tech massacre “touched

81 Id.
82 Id.
83 Id. at 26-27.
84 Christine Hauser and Anahad O’Connor, 
Virginia Tech Shooting Leaves 33 Dead,
85 VIRGINIA TECH PANEL REPORT at 27-28.
86 The university police force had in place a mutual aid agreement with the Blacksburg Police Department and operated an emergency response team. Id. at 11.
87 VT PANEL REPORT at 28.
88 Id.
89 Id.
90 Id.
off an intense debate over whether colleges should remain gun-free zones, or whether allowing students and faculty to carry concealed weapons might have resulted in fewer deaths.”

As the country reeled from the horrors of Virginia Tech, Republican presidential candidate Fred Thompson stated that same year that he would support arming students on college campuses to avert future attacks. While the NRA shied away from this idea, a small group of conservative college students from the University of North Texas picked it up and ran, launching a Facebook group called, “Students for Concealed Carry on Campus” (SCCC). The group’s prominence increased after it was covered by Glenn Beck on CNN and following another campus shooting several months later in Illinois. After Virginia Tech and the establishment of SCCC, the campus carry movement accelerated.

Its growth following Virginia Tech would be ironic, no doubt, to the drafters of the official university investigative report following that tragedy. In its Recommendation VI-5, that panel proposed that “guns be banned on campus grounds and in buildings unless mandated by law.”

B. Snapshot of State Campus Carry Laws

Describing the current state of campus carry is challenging, as the number of states considering some version of the law shifts every year. Nevertheless, this section provides a brief snapshot of campus carry across the country, including some detail on how the law is being implemented in the states where it has been adopted. This perspective allows a more thoughtful consideration of the Texas law in later sections.

As a starting point, each of the fifty states allows certain individuals


96 Inside the Fight, supra note ___.

97 Students for Concealed Carry, FAQ, available at http://concealedcampus.org/faq/; see Inside the Fight, supra note ___.

98 Inside the Fight, supra note ___.


100 VT PANEL REPORT at 76.
States may allow the public to carry concealed handguns in particular circumstances, assuming that state requirements are satisfied.  

States diverge significantly, however, when it comes to whether concealed handguns may be carried on college campuses. As of the time of this article, sixteen states, including California, Florida, Massachusetts, New Jersey, and New York, prohibit the carrying of weapons on university campuses.  

Twenty-three states give discretion to the individual university whether to allow concealed handguns on campus. Among states in this second category are Alabama, Maryland, Pennsylvania, Virginia, and Washington.  

In 2004, three years before Virginia Tech, Utah became the first state to allow the concealed carry of handguns on public college campuses. Prior to 2004, Utah had in place a prohibition that barred state entities from excluding weapons from their property. In that year, the state extended its prohibition to explicitly include “state institutions of higher education” and prohibited those entities from enacting or enforcing any rule that “in any way inhibits or restricts the possession or use of firearms on either public or private property.” That extension conflicted with a long-standing University of Utah rule that prohibited, for safety reasons, the carrying of weapons on campus. Litigation ensued following passage of the 2004 amendment. Two years later the Utah Supreme Court ruled that the


104 Guns on Campus: Overview, supra note ___.

105 More States Are Allowing Guns on College Campuses, supra note ___.

106 Utah Only State to Allow Guns at College, supra note ___. The Utah Supreme Court includes a discussion of the disagreements surrounding the University of Utah’s weapons policy in its decision ultimately finding that policy inconsistent with state law. See Univ. of Utah v. Shurtleff, 144 P.3d 1109, 1112 et seq. (Utah 2006).


110 Utah Only State to Allow Guns at College, supra note ___.
University of Utah was subject to the new law and was required to lift its weapons ban.\textsuperscript{111} Under current Utah law, individual universities are authorized by statute, through the state’s educational board, to designate one room on campus as a gun-free “hearing room” and to allow students living in dormitories to request roommates who are not licensed to carry firearms.\textsuperscript{112} Outside of these very narrow exceptions, universities are not authorized to regulate firearms on their campuses;\textsuperscript{113} instead, that right is explicitly reserved for the state legislature.\textsuperscript{114}

Since 2004, nine states have followed in Utah’s footsteps, authorizing campus carry in some capacity, and all following the Virginia Tech massacre. More accurately, these states prohibit public universities from denying the right of certain individuals to carry concealed weapons on campus. The other states falling into this category are Arkansas, Colorado, Georgia, Idaho, Kansas, Mississippi, Oregon, Texas, and Wisconsin.\textsuperscript{115} An additional state that is sometimes included in that general category, Tennessee, allows faculty members who have received a license from the state to carry their weapons on campus, but that same right does not extend to members of the general public or students.\textsuperscript{116}

Even beyond the states that allow campus carry, there has been a significant legislative push at the state level to enact similar laws. In 2017, at least sixteen additional states considered campus carry bills,\textsuperscript{117} but none was enacted. New York was one of the most surprising states to consider, though ultimately reject, a new campus carry law in 2017.\textsuperscript{118} 2015 and 2016 saw a similar number of campus carry bills introduced and debated in other states,\textsuperscript{119} most of which were never passed into law. Among the ten states, other than Texas, that have enacted campus carry, the details of the laws vary

\begin{enumerate}
\item \textsuperscript{111} \textit{Univ. of Utah v. Shurtleff}, 144 P.3d 1109 (Utah 2006).
\item \textsuperscript{112} \textit{Utah Statutes} § 53B-3-103 (2014).
\item \textsuperscript{113} \textit{Id.} §§ 63-98-102(6)(b) & 53B-3-103 (2004). The University of Utah’s weapons policy simply states that the university enforces state law regulating firearms on campus. See The University of Utah, \textit{Policy 1-003: Firearms on Campus (Interim Policy)}, available at http://regulations.utah.edu/general/1-003.php.
\item \textsuperscript{114} \textit{Utah Statutes} § 53B-3-103(2)(a)(ii) (2014).
\item \textsuperscript{116} \textit{Id.}
\item \textsuperscript{117} Neal H. Hutchens & Kerry B. Melear, \textit{More States Are Allowing Guns on College Campuses}, \textit{The Conversation} (August 17, 2017), available at https://theconversation.com/more-states-are-allowing-guns-on-college-campuses-81791 (hereinafter \textit{More States Are Allowing Guns on College Campuses}).
\item \textsuperscript{118} \textit{10 States Allow Guns on College Campuses, supra note ___}.
\item \textsuperscript{119} The Campaign to Keep Guns Off Campus, \textit{2015 Guns on Campus Bill Status (As of September 9, 2015)}; \textit{2016 State Legislation – Guns on Campus Bills (As of August 1, 2016)}, available at www.keepgunsoffcampus.org.
\end{enumerate}
dramatically.

In Idaho, for example, public universities may not prohibit the carrying of firearms on university property, including within all campus buildings, with exceptions only for student residence halls and arenas or stadiums seating at least 1,000 persons.\(^\text{120}\) But the right to carry on campus applies only to individuals who have obtained an “enhanced license to carry concealed weapons,”\(^\text{121}\) which requires additional training beyond the traditional concealed carry license issued by the state.\(^\text{122}\) While the governing boards of public universities in Idaho have the power to “prescribe rules and regulations relating to firearms,”\(^\text{123}\) that power explicitly does not extend to prohibiting firearms on campus.\(^\text{124}\)

In Kansas, the “Personal and Family Protection Act” mandates that the concealed carrying of handguns may not be prohibited in state or municipal buildings, which include those of public universities.\(^\text{125}\) The only major exception to this general rule is for areas where “adequate security measures [are in place] to ensure that no weapons are permitted,” as long as proper notice is posted.\(^\text{126}\) Adequate security measures, by statute, include the use of electronic equipment and armed staff to detect and restrict the carrying of weapons into the building through public entrances.\(^\text{127}\) The Kansas statutory framework also lists additional limited exceptions, including hospitals associated with the University of Kansas.\(^\text{128}\) But universities are not granted any other flexibility in their implementation of concealed carry, including the ability to create limited gun-free zones within their campus communities.

In Wisconsin, concealed weapons license holders may carry their handguns, as a general matter, on public or private property.\(^\text{129}\) That broad authority would extend to all premises of Wisconsin universities. However, Wisconsin also grants all universities, public and private, the power to opt out of the default law. As a result, if a university posts notice that handguns are not allowed in specific areas of campus, up to and including all areas of

\(^{120}\) \textit{Idaho Code} § 18-3309(2) (2014).

\(^{121}\) \textit{Id.} § 18-3302K (2014).

\(^{122}\) The enhanced license in Idaho requires, among other things, a training course of at least eight hours taught, in person, by a certified instructor and including the firing of at least 98 rounds by the student. See \textit{Idaho Code} § 18-3302K(4)(c)(2014).

\(^{123}\) \textit{Idaho Code} § 18-3309(1)(2014).

\(^{124}\) \textit{Id.} § 18-3309(2)(2014).

\(^{125}\) K.S.A. § 75-7c20(a)(2006).

\(^{126}\) \textit{Id.} § 75-7c20(a)(2006).

\(^{127}\) \textit{Id.} § 75-7c20(m)(1)(2016).

\(^{128}\) \textit{Id.} § 75-7c20(k)(6)(2016). Other areas specifically exempted by the Kansas statute include state-owned hospitals, adult care homes, mental health facilities, and indigent health care facilities. \textit{Id.} at (k)(2)-(5) (2016).

\(^{129}\) \textit{Wis. Stat.} § 175.60 (2018).
campus, then campus carry is not lawful.\[^{130}\] In practice, no private or public university in Wisconsin allows the carrying of weapons inside buildings, and no private university allows weapons on campus grounds.\[^{131}\] As a result, while Wisconsin is technically within the group of states that has authorized campus carry, that right does not exist in practice at any university in the state.

Arkansas requires individuals who wish to carry concealed weapons onto university campuses to undertake training beyond that required of ordinary license holders.\[^{132}\] Persons completing that enhanced training may possess concealed handguns “on the grounds of a public university, public college, or community college, whether owned or leased” by the school.\[^{133}\] Private universities may opt out of the law by adopting a policy to that effect and posting appropriate notices.\[^{134}\] The Arkansas statute does create limited exceptions to the default campus carry rule for public universities. For example, license holders may not store their handguns in university-operated dormitories.\[^{135}\] In addition, license holders may not carry their concealed weapons into a location where a disciplinary or grievance procedure is taking place.\[^{136}\] Beyond those limited exceptions that apply to all universities, the Arkansas law does not allow universities to establish firearms regulations.

In Colorado, the state legislature enacted the Concealed Carry Act in 2003, which allows a license holder to carry a concealed handgun “in all areas of the state.”\[^{137}\] Specific limited exceptions are recognized by statute, including the premises of a public elementary, middle, junior high, or high school;\[^{138}\] public buildings where permanent screening devices are installed.

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\[^{130}\] [Id. § 943.13(1m)(c)5(2018)].

\[^{131}\] [Laws Concerning Carrying Concealed Firearms on Campus in Wisconsin, ARMED CAMPUSES, available at http://www.armedcampuses.org/wisconsin/ (citing data as of October 1, 2016); see Concealed Carry, The University of Wisconsin Alumni Association, available at https://www.uwalumni.com/support/advocate/current-issues/concealed-carry/ (stating that The University of Wisconsin-Madison “has designated all buildings as weapon-free facilities”); Weapons Policy, Marquette University, available at http://www.marquette.edu/weapons-policy/ (explaining that the university prohibits weapons in all university buildings, including academic, residence, and office areas); and Firearms and Dangerous Weapons, The University of Wisconsin – Milwaukee, available at http://uwm.edu/legal/firearms-and-weapons/ (stating that weapons are prohibited in all university buildings, residence halls, vehicles, and special events).]

\[^{132}\] [ARKANSAS CODE § 5-73-322(g)(1) (requiring, among other things, training of a maximum of eight hours, four of which may be waived if the licensee has undergone prior training within at past ten years)].

\[^{133}\] [Id. § 5-73-322(b)].

\[^{134}\] [Id. § 5-73-322(c)(2)].

\[^{135}\] [Id. § 5-73-322(d)].

\[^{136}\] [Id. § 5-73-322(e)(1)].

\[^{137}\] [C.R.S. §18-12-214(1)(a)(2017)].

\[^{138}\] [C.R.S. §18-12-214(3)(2017)].
and security personnel screen all persons entering the building so that weapons can be left with the security staff; and private property where the owner has chosen to exclude weapons. An explicit exemption for college campuses was considered and rejected by the legislature. When this law was enacted, Colorado State University immediately complied and allowed concealed carry throughout the campus, other than in residence halls and dining facilities. The University of Colorado at Boulder, however, refused to comply with the law and was supported by the state’s Attorney General. That office issued an opinion in 2003 stating that the university was, despite the broad concealed carry law, authorized to prohibit weapons throughout the university’s premises. A lawsuit brought by SCCC followed several years later, which worked its way up to the Colorado Supreme Court. In 2012, that court ruled that the broad language of the concealed carry statute, combined with the narrow exceptions carved out in the statute, reflected the clear legislative intent to divest the University of Colorado’s authority to regulate the possession of concealed handguns on campus. As a result, the University of Colorado now allows the carrying of concealed weapons by license holders throughout its premises, with the exception of ticketed public performance venues.

Mississippi is one of currently eleven states that has authorized “constitutional carry,” or the right of individuals to carry a concealed weapon

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139 C.R.S. §18-12-214(4)(2017).
140 C.R.S. §18-12-214(5)(2017).
142 Id.; Colorado State University Police Department, Weapon Storage Information, available at https://police.colostate.edu/weapon-storage-and-information/.
143 State of Colorado Department of Law, Office of the Attorney General, Formal Opinion of Ken Salazar, No. 03-03 at 6 (June 17, 2003).
144 Regents of the Univ. of Colo. v. Students for Concealed Carry on Campus, LLC, 271 P.3d 496, 497 (Colorado 2012).
145 The University of Colorado Boulder, Weapons on Campus, available at https://www.colorado.edu/police/services-faqs/weapons-campus. The exceptions to campus carry carved out by both The University of Colorado Boulder and Colorado State University appear to be based on the general idea that the universities may regulate weapons in limited circumstances in contractual or licensor-licensee arrangements, such as in the dining hall, residence hall, or sports arena context. See generally, Armed Campuses, Laws Concerning Carrying Concealed Firearms on Campus in Colorado, available at http://www.armedcampuses.org/colorado/; see also, Colorado School of Mines, Policy on Firearms, Explosives, and Other Weapons § 2.5 (rev. October 1, 2013)(recognizing the broad right to concealed carry on campus for license holders, but reserving the right to prohibit weapons in any buildings where access is granted pursuant to a contractual relationship, such as in the housing context).
in public without receiving any governmental license.\textsuperscript{146} Although that general right does not extend to the unlicensed carry of concealed weapons on university campuses, Mississippi offers an Enhanced Carry Permit, which does.\textsuperscript{147} As a result, individuals who satisfy the heightened license requirements for this enhanced permit have the right to carry their concealed weapons onto the premises of all colleges and universities in Mississippi.\textsuperscript{148} Despite that authorization, Mississippi universities continue to implement regulations that restrict the carrying of concealed weapons on their campuses. For example, both the University of Mississippi and Mississippi State University prohibit concealed carry, despite the existence of Enhanced Carry Permits, in all academic buildings, classrooms, laboratories, administrative offices and buildings, athletic facilities, residence halls, and other areas where university events are scheduled.\textsuperscript{149} The universities appear to base these exclusions on the fact that the no-weapons areas are not open to the public and are sensitive in nature.\textsuperscript{150} As a result, it appears that some confusion


\textsuperscript{147} State of Mississippi Attorney General Opinion, December 2, 2013, (“Re: City Ordinance Prohibiting the Carrying of Firearms”) at 4.

\textsuperscript{148} \textit{Id.}; \textit{How to Carry a Gun in Mississippi, supra note ___}.


\textsuperscript{150} The University of Mississippi, \textit{Weapons on Campus}, available at https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0ahUKEwjqm5mn-5bZAhUm94MKHekrArkQFggmMAA&url=https%3A%2F%2Fsecure24.olemiss.edu%2Fumpolicyopen%2FGetPdfActive%3Fpol%3D12092519%26ver%3Dactive%26file%3D12092519_active_20160902.pdf&usg=AOvVaw0wgICBrS7uI2AHr3yYAbfa (stating that Enhanced Carry Permit holders may not bring concealed weapons into the listed areas, which have been “designated as sensitive or non-public areas”). A similar distinction was made by the Mississippi Attorney General’s Office in the context of analyzing whether the state’s weapon permitting scheme allowed for the carrying of concealed weapons onto the premises of public schools. \textit{See} Office of the Attorney General (October 1, 2013), “Re: Concealed Weapon on a Public School Campus,” 2013 WL 5975600 (Miss. A.G.). The Attorney General explained that, “[a]lthough an enhanced licensee may carry into the public areas of a school facility, the enhanced license does not authorize him to enter onto parts of property where the public is not generally allowed.” \textit{Id.} That opinion also cited \textit{Digiacinto v. Rector and Visitors of George Mason University}, 704 S.E. 2d 365, 370 (Va. 2011) for the proposition that, “[a] university, unlike a public street or park, is not traditionally open to the public.” \textit{Id.}
currently exists around the topic of campus carry in Mississippi. And as of the date of this article, the state legislature was debating a proposed bill that would allow holders of Enhanced Carry Permits the right to sue to enforce their right to carry weapons onto university property.\textsuperscript{151}

Despite vetoing a similar bill the prior year, Georgia’s governor made that state the most recent to authorize campus carry on July 1, 2017.\textsuperscript{152} That enactment occurred despite the unified opposition of school presidents, university police chiefs at the University System of Georgia’s twenty-eight educational institutions, and the Atlanta Chief of Police.\textsuperscript{153} Under the new campus carry law in Georgia, handgun license holders may carry their weapons in a concealed manner in any building or on the real property of any public college or university.\textsuperscript{154} The statutory scheme specifies several limited exception areas where concealed carry is prohibited at all public colleges and universities, including in buildings used for sporting events; student housing, including fraternity and sorority houses; areas where childcare is provided; rooms where high school students are enrolled in dual credit programs; faculty, staff, and administrative offices; and rooms where disciplinary proceedings are conducted.\textsuperscript{155} Georgia does not include in its statutory framework any discretion for universities in implementing the new law or in promulgating rules to regulate campus carry. The University System of Georgia’s Chancellor made this point clear in his Guidelines for the Implementation of House Bill 280: “Institutions . . . may not place additional restrictions or prohibitions on the carrying of handguns beyond those contained in the law.”\textsuperscript{156}

\textsuperscript{151} Mississippi Legislature, Committee Substitute for H.B. 1083, Regular Session 2018; Dennis Dodd, SEC Commish Stands Against Proposed Mississippi Law Allowing Guns on Campuses, CBSSports.com (February 8, 2018)(explaining that the proposed bill would allow concealed weapons at college sporting events).


\textsuperscript{154} \textsc{Georgia Code} \textsection{} 16-11-127.1(20)(A)(2017).

\textsuperscript{155} Id. \textsection{} 16-11-127.1(20)(A)(i), (ii), (iv), and (v)(2017). The law also does not require posting of notice outside areas where weapons are prohibited, thereby putting the burden of knowing where weapons are allowed squarely on the license holder. The University System of Georgia, Chancellor Steve Wrigley, Guidelines for the Implementation of House Bill 280 at 3 (May 24, 2017).

\textsuperscript{156} The University System of Georgia, Chancellor Steve Wrigley, Guidelines for the
In Oregon, the state of campus carry is a confused mix of state statutory law, judicial opinions, and contradictory but apparently unenforced university and board of education policies. In 2011, the Oregon Court of Appeals struck down a board of education regulation that banned guns on university campuses as inconsistent with the state’s law reserving all power to regulate firearms to the legislature. Following this decision, the Oregon University System issued a new “policy” in 2012 that had the same impact as its prior “rule”: a prohibition, citing security concerns, on the carrying of firearms on university property by students, employees, anyone attending events on campus, and anyone renting university property, “whether or not that person possesses a concealed handgun license.” Although the Oregon University System disbanded in 2015, individual universities had already adopted internal policies consistent with that 2012 state-wide policy. For example, The University of Oregon prohibits firearms on campus, referencing the 2012 State Board of Higher Education policy. In the face of these contradictory policies and rulings, at least some Oregon university students are choosing to carry concealed weapons on campus, in defiance of their schools’ prohibitions. It is unclear whether Oregon universities are enforcing their individual prohibitions on firearms at this time, thus making the current state of campus carry in Oregon uncertain.

Implementation of House Bill 280 at 3 (May 24, 2017).
158 Or. Firearms Educ. Found. v. Bd. of Higher Educ., 264 P.3d 160 (Ct. Appeals Oregon 2011); see also 2015 O.R.S. 166.70 (1) (“Except as expressly authorized by state statute, the authority to regulate in any matter whatsoever the sale, acquisition, transfer, ownership, possession, storage, transportation or use of firearms or any element relating to firearms and components thereof, including ammunition, is vested solely in the Legislative Assembly.”).
163 Id. (Oregon universities “would likely see their policies regulating guns on campus
In summary, the status of campus carry in the current nine states that allow it is confused, inconsistent, and dominated by polarized positions. At the very least, these states have done a poor job balancing the right of license holders to carry firearms on campus with the need to provide individual flexibility to universities in implementation.

IV. TEXAS CAMPUS CARRY

Against this backdrop of U.S. campus carry laws, the following section looks in more depth at Texas: the general structure of guns laws in the state, a brief history of the enactment of campus carry in Texas, the framework of the state’s campus carry law, and how universities have implemented it.

A. Context of Texas Gun Laws

Although Texas has a reputation as being a bastion for gun rights,164 it also has a long history of regulating firearm possession, dating to at least 1866.165 In that year, the Texas Legislature limited the carrying of firearms in a variety of settings, including at polling places and public assemblies.166 A broader framework limiting the carrying of firearms in public was enacted in 1871, with exceptions for militiamen, police, property owners on their premises, travelers, and persons in fear of unlawful immediate attack.167

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164 Mike Ward, Gun-Related Bills Are Moving Slowly, AUSTIN AMERICAN-STATESMAN at A1 (May 1, 2013).
165 Comment: Where Do I Put My Gun?: Understanding the Texas Concealed Handgun Law and the Licensed Owner’s Right-to-Carry, 6 TEX. TECH J. ADMIN. L. 139, 143 (2005); Riley C. Massey, Bull’s Eye: How the 81st Legislature Got it Right on Campus Carry, and the 82nd Should Still Hit the X-Ring, 7 TEX. WES. L. REV. 199, 203 (2011) (citing Act approved Nov. 6, 1866, 11th Leg., R.S., ch. 92 § 1, 1866 Tex. Gen. Laws 90, reprinted in 5 H.P.N. Gammel, The Laws of Texas 1822-1897, at 1008, 1008-09 (Austin, Gammel Book Co. 1898)(making trespass with a firearm an offense punishable by a maximum ten-dollar fine and ten-day incarceration in the county jail)).
Although challenges to these laws were brought on constitutional grounds, such concerns were largely resolved by case law the following year and an amendment to the Texas Constitution in 1875 that expressly recognized the State’s power to prevent crime through the regulation of an individual’s right to carry firearms.

Over 100 years would pass before Texas’s next foray into significant gun legislation. In 1995, the Texas Legislature passed a bill allowing concealed carry of handguns (CCH) for self-protection. The Texas CCH law created a non-discretionary right to a CCH license for individuals who met all statutory application requirements, making Texas a “right to carry” state. The Texas CCH law, which was considered somewhat restrictive when compared to those of other states, allowed CCH license holders to carry their weapons in a concealed manner in public locations, with certain limitations. The Texas Legislature enacted various amendments to the CCH law over the years for clarity and to promote the uniform application of the law. The CCH framework remained in Texas until January 1, 2016, when the State’s new “open carry” law, passed in the spring of 2015, went into effect. Under that new law, the open carry of firearms is allowed by handguns license holders, with generally the same limitations that existed under the prior CHL statutory scheme. No additional training or license was required of CHL license holders—now simply referred to as license holders—to be allowed to open carry after enactment of the new law.

One of the few exceptions to the state’s concealed and then open carry laws has been the college campus, where weapons were generally not allowed. In reality, though, weapons were only prohibited within buildings on college campuses. Since 1995, license holders in Texas have been authorized to carry their handguns in outdoor areas of colleges, including

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168 Where Do I Put My Gun?, supra note ___ at 143; Riley, supra note ___ at 204.
169 Riley, supra note ___ at 204 (citing English v. State, 35 Tex. 473, 477 (1872)).
170 Where Do I Put My Gun?, supra note ___ at 143; A Farewell to Arms?, supra note ___ at 603-04 (citing Tex. Const. art. I, § 23: “[T]he legislature shall have the power, by law, to regulate the wearing of arms, with a view to prevent crime.”); Riley, supra note ___ at 204.
sidewalks, parking lots, and breezeways. However, because license holders were not allowed to carry their weapons into college buildings, the number of weapons being carried on sidewalks between buildings was likely low prior to the enactment of campus carry. In 2013, Texas loosened its gun laws slightly by prohibiting universities from regulating the storage of lawfully-possessed firearms in motor vehicles located on college campuses.

B. Legislative Battle to Enact Campus Carry in Texas

Serious efforts to enact campus carry in Texas began in 2009 and were ongoing through eventual passage of the law in 2015. Even in a state as gun-friendly as Texas, campus carry took six years to pass and faced considerable opposition and split public opinion along the way.

In 2009, companion bills S.B. 1164 and H.B. 1893 were introduced in the Texas Legislature to authorize campus carry on the premises of both public and private institutions, with no opt-outs. Official motivations underlying these bills focused on personal safety and logistical challenges posed to license holders from the patchwork of conflicting rules related to carrying handguns across Texas. The Legislature’s Bill Analysis of H.B. 1893 noted that the pre-campus carry legal landscape created “legal and geographical barrier[s] for concealed handgun licensees who visit or who live, work, or study on a college or university campus, denying them the right to protect themselves in these settings.” The right of self-protection on a college campus was viewed as especially important given the attacks at Virginia Tech just two years earlier, which were explicitly referenced. The Legislature’s analysis also noted that concealed license holders go through extensive handgun training and are usually law-abiding and responsible citizens, further justifying the proposed law. Despite having seventy-five primary, joint, and co-authors, and being voted out of the House Committee on Public Safety, H.B. 1893 was never voted on by the full House. S.B. 1164, Introduced Version 2009, available at http://www.legis.state.tx.us/tlodocs/81R/billtext/pdf/SB01164I.pdf#navpanes=0; H.B. 1893, Introduced Version 2009, available at http://www.legis.state.tx.us/tlodocs/81R/billtext/pdf/HB01893I.pdf#navpanes=0; Bill Analysis, C.S.H.B. 1893 at 1: http://www.capitol.state.tx.us/tlodocs/81R/analysis/pdf/HB01893H.pdf#navpanes=0

174 Trymaine Lee, New Texas Law Allows College Students to Carry Guns on Campus, NBC News (August 1, 2016).
175 The University of Texas, Campus Carry General Information, available at http://campuscarry.utexas.edu/.
177 Bill Analysis, C.S.H.B. 1893 at 1: http://www.capitol.state.tx.us/tlodocs/81R/analysis/pdf/HB01893H.pdf#navpanes=0
178 Id.
179 Id.
180 Id.
181 Id.
1164, with thirteen primary and co-authors, was approved by the Senate and voted out of the House Committee on Public Safety, but it died before being considered by the full House.\textsuperscript{182}

The push to allow handgun carry on Texas campuses gained momentum in 2011. In that legislative session, at least five proposed campus carry bills were introduced. Although they all sought to authorize the concealed carry of handguns throughout college campuses, they varied on topics such as storage of handguns in dormitories; whether private universities would be obligated to comply; and whether hospitals operated by universities would be exempt.

The most promising of those 2011 legislative efforts was originally S.B. 354, co-authored by Sen. Wentworth and endorsed by the Texas Governor.\textsuperscript{183} Sen. Wentworth’s motivation was avoiding another school massacre: “to give faculty, staff and students a way to defend themselves when some deranged person comes on campus intending to commit suicide and take as many people with him as he can like they did at Virginia Tech several years ago.”\textsuperscript{184} By empowering law-abiding citizens to carry a firearm on a university campus, Wentworth hoped to “put an element of doubt in a shooter’s mind.”\textsuperscript{185} Without that protection, students, faculty, and staff would be easy targets for a campus shooter: “A [gun-free zone] means it’s a victim zone.”\textsuperscript{186}

S.B. 354 would have barred public universities from implementing rules that prohibited concealed carry of handguns on campus by license holders, although private universities would have had the choice of opting out of the law.\textsuperscript{187} Other than granting public universities a limited right to regulate firearm storage in university-owned dormitories on campus, the proposed bill did not authorize universities to regulate weapons on campus. In committee, Rep. Wentworth’s bill was amended in various ways, including insertion of a prohibition on concealed carry in hospitals operated by a college or university. He fought off other attempted modifications of his bill in committee, including a push to allow public universities to opt out of the law altogether.\textsuperscript{188}

But the real battle over S.B. 354 was not in the detail of its content; it

\begin{footnotes}
\item[182] Id.
\item[185] Survivors Decry Campus Gun Legislation, supra note \textsuperscript{___}.
\item[186] See Legislators Push for Guns on Campus, supra note \textsuperscript{___}.
\item[188] College Liberals Attempt to Gut Campus Carry Bill, AmmoLand.com (April 8, 2011)
\end{footnotes}
was whether, and if so, how, the bill would even make it out of the Texas Senate. Chamber rules required a two-thirds Senate vote to bring a bill up for debate. Although Sen. Wentworth made multiple attempts to garner the necessary votes to have his bill considered by the Senate, he was unsuccessful each time. That difficulty was “surprising in a Republican-controlled legislative chamber that generally is friendly to gun-rights legislation and approved a similar bill two years ago by a 20-11 vote.” If the bill could somehow pass the Senate, it faced a less rocky future in the House, where it had eighty co-authors and Republicans held a 101-member supermajority. Unable to bring his bill up for debate on its own, Rep. Wentworth attempted a different procedural tack: He tried to attach S.B. 354 as an amendment to another Senate bill with more support. Bringing a bill up for debate in the Senate required twenty-one votes. Amendments to bills required only sixteen votes. Rep. Wentworth had twenty.

Rep. Wentworth’s new approach targeted legislative efforts of Sen. Judith Zaffirini, who was Chairman of the Senate Higher Education Committee. He first tried to attach his campus carry language to an uncontroversial but important college administration bill sponsored by Sen. Zaffirini. Sen. Zaffirini was so opposed to campus carry that she ultimately chose to withdraw and kill S.B. 5 rather than allow it to be amended to include Sen. Wentworth’s proposed language. Undaunted, Sen. Wentworth sought other bills that could help him move campus carry forward: “There are several ways to skin a cat in this legislative body,” he told reporters. Several days later, Sen. Wentworth was successful in attaching his language to a higher-education finance amendment sponsored by Sen. Zaffirini. Republican Sen. Steve Ogden, author of the underlying S.B. 1581, accepted Sen. Wentworth’s proposed amendment. With a vote of 19-12, the Texas Senate approved campus carry. After weeks of political wrangling – labeled “Groundhog (With a Gun) Day” by Sen. Dan Patrick – it appeared that

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189 See College Liberals Attempt to Gut Campus Carry Bill, supra note ____.
190 Mike Ward, Campus-Carry Bill in Trouble, AUSTIN AMERICAN-STATESMAN (April 12, 2001).
191 Id.
192 Id.
193 Id.
194 Mike Ward, Campus-Carry Bill Gambit Stalls, AUSTIN AMERICAN-STATESMAN (April 28, 2011).
195 Id.
196 Id.
197 Mike Ward, Campus Guns Bill Receives New Life, AUSTIN AMERICAN-STATESMAN (May 10, 2011).
campus carry was headed for smooth sailing in the more conservative-leaning House.

But guns on campus had “quickly boiled into one of the most controversial issues of the session,” and the fight was not over. After reviewing S.B. 1581, the Texas House of Representatives declared that Sen. Wentworth’s amendment to the finance bill was procedurally improper, and the House returned the bill to the Senate for removal of the campus carry language. Proponents of campus carry in the Senate scrambled to respond to this surprise move, attempting passage of campus carry as a stand-alone bill. As with similar attempts earlier in the session, that effort failed. When it did, campus carry in 2011 was dead in the Texas Legislature.

While it is unclear exactly why Sen. Wentworth was unable to garner the necessary support for campus carry in the conservative Texas Legislature in 2011, it is apparent that significant opposition to the measure came from certain constituent groups. In particular, the University of Texas System Chancellor, Francisco Cigarroa, vocally opposed campus carry in a letter to Gov. Perry: “I must concur with all the concerns and apprehensions expressed to me, that the presence of concealed weapons, on balance, will make a campus a less-safe environment.” The UT Austin Faculty Counsel and the Texas A&M University Faculty Senate also opposed campus carry in 2011. Pressure also came from outside Texas, including from the national press and organizations such as the Brady Campaign to Prevent Gun Violence.

After coming so close to passage in 2011, campus carry in Texas appeared poised for adoption during the 2013 Legislative Session.

200 Mike Ward, Campus Gun Bill’s Chances Look Bleak, AUSTIN AMERICAN-STATESMAN at A1 (May 21, 2011).
201 Id.
202 Id.
203 Id.
204 Ben Wermund, Chancellor Says Guns on Campus a Bad Idea, Austin American-Statesman at B1 (February 26, 2011).
205 Alex Hannaford, The Campus Carry Movement Stutter-Steps Across America, ATLANTIC ONLINE (May 10, 2011).
206 Guns on Campus Could Cause More Tragedy Than They Avert, USA TODAY at 6A (March 1, 2011).
207 The Campus Carry Movement Stutter-Steps Across America, supra note ____.
208 Other bills relating to guns on campus were considered in 2013, including one that would have allowed for “secret ‘school marshals’ with concealed handgun licenses and 80 hours of special training” and one that would have allowed teachers to be specially trained to deal with school shooting incidents before law enforcement arrived on the scene. Mike Ward, Emotional Divide Over Weapons on Campus, AUSTIN AMERICAN-STATESMAN at A01 (March 15, 2013).
Sane Gun Policy from Texas?

However, while the arguments swirling around campus carry were not new, the overall societal context had changed. Less than a month before the start of the 2013 regular session, the Newtown, Connecticut school shooting left twenty-six people dead, including twenty children between the ages of five and ten years old. The horror of this monstrous violence against children in the school setting, committed with a rifle and two handguns, appears to have subdued at least some of the pro-gun members of the Texas Legislature in 2013.

Nevertheless, Texas legislators filed almost 100 bills related to guns during the 2013 session, twice the number filed in the prior session, including bills that would have allowed school teachers designated as marshals to carry weapons in classrooms. And when legislative hearings on campus carry rolled around, passionate standing room only crowds showed up and were vocal.

Supporters often referenced the importance of personal safety in the classroom and the fundamental right to bear arms. Senator Brian Birdwell,


210 While an aversion to introducing guns into schools following Sandy Hook may be reasonable, that same tragedy could have rallied further support for campus carry and reinvigorated the Legislature’s desire to enact universal concealed carry for protection. Mike Ward, Emotional Divide Over Weapons on Campus, AUSTIN AMERICAN-STATESMAN at A01 (March 15, 2013) (stating that, “This year, with the Connecticut massacre in December heightening public fears about school security, supporters hope they stand a better chance” of seeing campus carry legislation passed); David Below, Texas Campus-Carry New Gun Bill Filed by State Senator Brian Birdwell, Texas Conservative Republican News – David Bellow Blog (January 29, 2013) (stating that “[g]un-rights advocates hope that tragedy will lead lawmakers and the public to view allowing guns at colleges as making campuses safer”). In fact, some evidence suggests that state legislative activity on campus carry increased immediately following this attack. See Concealed Carry Legislation and Changing Campus Policies, supra note ___ at 61.


212 The first legislative hearing on campus carry in 2013 drew dozens of supporters and opponents. Mike Ward, Emotional Divide Over Weapons on Campus, AUSTIN AMERICAN-STATESMAN at A01 (March 15, 2013). Later public hearings were also well-attended with high emotions on both sides of the issue. Mike Ward, House Tentatively Oks a Dozen Pro-Gun Bills, AUSTIN AMERICAN-STATESMAN (May 5, 2013). See also Claire Cardona, Committee Hears Testimony from Both Sides of Guns on Campus Debate, DALLAS MORNING NEWS (March 14, 2013).

213 State Representative Dan Flynn explained the reason for a 2013 committee hearing to consider campus carry: “The Second Amendment was not created for the purpose of allowing people the opportunity to hunt, fish[,] or collect firearms; the purpose of the Second
who introduced a campus carry bill in 2013, said that the issue was not simply about guns; “[i]t’s about trusting citizens with their God-given, constitutional rights.” 214 Another pro-campus carry legislator looked forward to a time when his twenty-three year old son in college could defend himself if needed: “I’d love to know if some lunatic gets loose on campus with an AK-47 in his classroom, it’s going to be a short-lived episode.” 215 Many university administrators were opposed, citing safety concerns with having more guns on campus and the poor fit of a one-size-fits-all approach in a state as geographically diverse as Texas. 216 Officials from UT Austin, in particular, strongly opposed the proposed campus carry measure. 217 Policy and lobbying groups also became involved in the debate over guns on campus, including the Texas State Rifle Association (TSRA), 218 Students for Gun-Free Schools in Texas, 219 and Texas Gun Sense. 220 Officials at universities in Texas and throughout the country 221 were also asked about their positions on campus carry and were forced to formulate and issue public statements. While many universities were noncommittal and simply stated their plan to follow

Amendment was to grant each and every individual the right to protect themselves from whoever and whatever they felt were a threat to their wellbeing. That fundamental right is why we were here today discussing these issues.” States News Service, “Committee on Homeland Security and Public Safety Hears Controversial Gun Legislation.” March 15, 2013.

214 Kolten Parker, Legislature Might Revisit Issue of Guns on Campus; Bill Wouldn’t Let Colleges Prohibit Weapons, SAN ANTONIO EXPRESS-NEWS at B1 (January 18, 2013).

215 Brittany Hoover, Area Legislators Share Thoughts on Higher Education Issues, LUBBOCK AVALANCHE-JOURNAL (January 9, 2013).

216 Id. Some university administrators were not opposed to the general idea of allowing concealed carry on campus, but believed that the decision whether to allow guns should be made on a campus-by-campus basis. See Kolten Parker, Legislature Might Revisit Issue of Guns on Campus, SAN ANTONIO EXPRESS-NEWS (January 18, 2013).


218 Ben Kamisar, Senator Files Campus Gun Bill, AUSTIN AMERICAN-STATESMAN at B01 (January 18, 2013) (quoting Alice Tripp, legislative director for the TSRA as stating that, “There’s a more compelling reason than ever for adults with a concealed handgun license attending a college or university (to) be allowed to have that personal protection option”).

219 Id.

220 Kolten Parker, Campus Gun Bill is Declared Dead, THE HOUSTON CHRONICLE (April 25, 2013).

221 In an attempt to sway policy makers, university presidents from across the country signed a letter at www.collegepresidentsforgunsafety.org opposing campus carry legislation. Several Texas universities, including Austin College, Trinity University, the University of Dallas, and Southwestern University, signed the letter. Brittany Hoover, Area University, College Leaders React to Planned Campus Carry Bill, LUBBOCK AVALANCHE-JOURNAL (January 19, 2013).
whatever law was enacted, two private universities, Wayland Baptist University and Lubbock Christian University, came out early in the 2013 legislative session opposed to campus carry.

Despite public rhetoric and engagement on the issue, the primary campus carry bill in the Senate quickly became stuck in the Senate Criminal Justice Committee. The chair of that committee, John Whitmire, called campus carry “a very divisive issue” and publicly voiced opposition to the bill: “After Sandy Hook and all the other tragedies we’ve seen in recent months, we need a cooling off period before we start approving guns in a lot of other public places. I respect the status quo right now.”

On the other hand, the House version of campus carry, H.B. 972, passed out of committee to the full House. It was approved by the House on a 102-41 vote, with supporters fending off various attempted amendments, including one that would have exempted universities within 75 miles of the Texas-Mexico border.

The Senate Criminal Justice Committee did ultimately pass the House version of campus carry contained in H.B. 972 on May 14, 2013. That version would have allowed public universities to opt out of campus carry and private universities to opt in, and all campuses covered by the law would have been required to reapprove their policies each year. Prohibitions to campus carry would have existed for sporting events, elementary schools on college campuses, official mass gatherings, and at campuses that included “bio-containment” laboratories.

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222 Brittany Hoover, *Area University, College Leaders React to Planned Campus Carry Bill*, LUBBOCK AVANLACNE-JOURNAL (January 19, 2013) (citing Texas Tech University, South Plains College, Western Texas College, Howard College, Wayland Baptist University, and Lubbock Christian University as examples of Texas colleges that had not taken a stance on campus carry early in the 2013 legislative session).

223 *Id.*


225 *Id.*


229 *Id.*; Mike Ward, *Weaker Campus Carry Measure Passes House*, AUSTIN AMERICAN-STATESMAN at B3 (May 7, 2013).

committee, urged passage of the bill and warned that failure to do so would result in a “more stringent” campus carry bill during a special session in the summer of 2013.\textsuperscript{231} Although the bill was passed out of committee, it came up two votes short in the full Senate.\textsuperscript{232}

Supporters of campus carry urged the Texas Governor to add the topic to the agenda for a summer special legislative session, in part because the threshold for allowing Senate consideration of a bill would have been lower.\textsuperscript{233} Despite pressure from various legislators and interest groups, including the TSRA and SCCC, the subject was not added to any of the three special sessions called by the Governor.\textsuperscript{234}

Campus carry ultimately passed in the 2015 Texas legislative session, but the process was not without some political drama and wrangling. Emotions on this issue remained high, and it became caught up in the broader “open carry” debate that took center stage that year. During the early stages of the 2015 session, “the behavior of some gun rights activists led to the installation of new panic buttons in [legislative] offices.”\textsuperscript{235} And one Democratic lawmaker added a security detail after receiving death threats following his decision to “kick a group of open carry advocates out of his office.”\textsuperscript{236} One organization, Moms Demand Action for Gun Sense in America, confirmed that because of death threats before a public hearing in 2015, it had hired armed security for its testimony.\textsuperscript{237}

Texas voters were split on campus carry in 2015, with 47% in favor and 45% opposed.\textsuperscript{238} Beyond the usual personal safety arguments that had always been made in favor of campus carry, a related argument, made with increasing frequency, began to resonate with lawmakers: Arming female students would help reduce sexual assaults.\textsuperscript{239}

University leaders also became more vocal that year, with the UT Austin faculty and administration firmly opposed to campus carry yet

\begin{itemize}
  \item \textsuperscript{231} Id.\textsuperscript{231}
  \item \textsuperscript{232} Legislative Notebook; Whitmire Calls ‘Campus Carry’ Dead, SAN ANTONIO EXPRESS-NEWS at A6 (May 22, 2013).
  \item \textsuperscript{233} David Saleh Rauf and Kolten Parker, Pushing Campus Carry; Gun Rights Backers Eye Special Session, SAN ANTONIO EXPRESS-NEWS at A3 (August 5, 2013).
  \item \textsuperscript{234} Mike Ward and Tim Eaton, Campus Carry Backers Upset, AUSTIN AMERICAN-STATESMAN at B1 (July 13, 2013).
  \item \textsuperscript{235} Morgan Smith (The Texas Tribune), Because of Threats, Gun Control Group Hires Security for Capitol Hearing, LONGVIEW NEWS-JOURNAL (February 11, 2015).
  \item \textsuperscript{236} Id.\textsuperscript{236}
  \item \textsuperscript{237} Id.
  \item \textsuperscript{238} Id.
  \item \textsuperscript{239} Chuck Lindell and American-Statesman Staff, Texas Voters Split Over Campus Guns, AUSTIN AMERICAN-STATESMAN at A11 (February 25, 2015).
  \item \textsuperscript{239} Alan Schwarz, A Bid for Guns on Campuses to Deter Rape, N.Y. TIMES (February 19, 2015); 10 States Allow Guns on College Campuses, supra note ____.
\end{itemize}
again. In contrast, the Chancellor and student body at Texas A&M University were supportive of the proposed law.

Possible administrative challenges to implementation were also raised in 2015, with The University of Texas and University of Houston systems estimating that it would cost nearly $47 million over six years to implement campus carry through updated security systems, the construction of gun storage facilities, and bolstering campus police units. The sponsor of S.B. 11, Sen. Brian Birdwell called the prospect of such efforts and expenses, “patently absurd.”

On January 26, 2015, legislators in both the Texas House and Senate filed identical campus carry bills, which became the basis for the law ultimately enacted in Texas: H.B. 937 and S.B. 11. The general framework of both initial bills was similar to prior efforts. They barred public and private universities from adopting rules that prohibited license holders from carrying their weapons on campus in a concealed manner. The draft bills did provide administrators some flexibility, however. Guns could be prohibited in various specified areas, including residence halls, sporting events, university-operated hospitals, and on-campus preschools. But no general right to create gun-free zones existed. In addition, private universities were given the power to opt out of the proposed law altogether.

While the basic approach of these bills was similar to earlier failed attempts, there were at least two reasons to predict a higher likelihood of passage at the beginning of the 2015 legislative session. First, gun rights were a hot topic in the 2014 Texas gubernatorial election, with both major party candidates announcing their support for the open carry of weapons. Greg

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240 Eleanor Dearman, UT Students and Professors Testify Against Campus Carry, THE DAILY TEXAN at 1 (March 17, 2015) (recounting public testimony of faculty and students at a House committee meeting on campus carry); Samantha Ketterer, Student Government Votes to Oppose State Senate “Campus Carry” Proposal, THE DAILY TEXAN at 1 (February 18, 2015) (noting that twenty-one of the UT student government organization’s twenty-seven members voted to oppose campus carry); Ralph K.M. Haurwitz, UT Faculty Panel Unanimous in Opposing Guns on Campus, AUSTIN AMERICAN-STATESMAN at A4 (February 17, 2015) (reporting that UT Faculty Council voted unanimously to oppose campus carry); American-Statesman Staff, Colleges Need Last Say on Campus Carry, AUSTIN AMERICAN-STATESMAN (January 29, 2015) (noting that the Chancellor of the University of Texas System and the UT Austin President “have both publicly opposed efforts to allow students, faculty and the public to carry guns on campus”).

241 Ralph K.M. Haurwitz, UT Faculty Panel Unanimous in Opposing Guns on Campus, AUSTIN AMERICAN-STATESMAN (February 17, 2015).

242 Houston Chronicle, Open Carry on Campus Could Cost Colleges Millions, LONGVIEW NEWS-JOURNAL (February 23, 2015).

243 Id.

244 Eleanor Dearman, Republicans Fire First Shot in Campus Carry Debate, THE DAILY TEXAN at 1 (January 27, 2015).

245 Id.
Abbott, who won a resounding victory in that election, came out during the campaign strongly in favor of expanded rights for gun owners, including the right to carry concealed weapons on college campuses.  

Second, the Texas Senate changed a critical procedural rule in 2014. The prior rule, which had been in place for sixty-eight years, had played a major role in the stalling of earlier campus carry efforts. And the revised rule, effective for the first time during the 2015 session, appeared to significantly increase the chances of similar legislation passing in the Senate. In 2013, Senate rules required two-thirds support, or twenty-one senators, to bring a bill up for debate on the Senate floor. That year, campus carry advocates were able to muster the support of only nineteen senators, and the bill stalled before being considered by the full Senate. Just prior to the 2015 session, the Senate changed its rules to require the support of only three-fifths of the thirty-one senators, or nineteen senators, to bring a bill up for discussion in the full Senate. In the 2015 legislative session, there were twenty Republican members of the Senate, and nineteen of them had signaled their support for campus carry by signing on as authors of one draft bill.  

The initial public hearing on S.B.11 was long and heated, and after nine hours of testimony by more than 100 witnesses, the Senate State Affairs Committee voted along party lines to pass the bill out of committee to the full Senate. The only change made to the bill was to clarify that even if open carry legislation passed in Texas, S.B.11 would authorize only concealed carry on college campuses. S.B.11 then passed out of the Texas Senate, over the objections of various groups, including law enforcement officials.  

Although it appeared headed for uneventful passage in the House, campus carry stalled there for several weeks as legislators worked through a number of behind-the-scenes issues, including who would get credit for the bill. Near the midnight end of the legislative session, it appeared that

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248 *Id.*

249 *Id.*

250 Chuck Lindell, *Open Carry, Campus Carry Bills Move Ahead in Senate*, AUSTIN AMERICAN-STATESMAN at A1 (February 13, 2015) (reporting that, among those testifying against campus carry were the Austin Police Chief, the first victim shot by Charles Whitman from the UT Austin tower in 1966, and a student shot four times during the 2007 Virginia Tech massacre).

251 *Id.*

252 See *Listen to All Texans on Gun Rights Bills*, AUSTIN AMERICAN-STATESMAN (March 20, 2015).

253 Chuck Lindell, *Deal Revives Campus Carry Bill*, AUSTIN AMERICAN-STATESMAN
Democrats had lined up enough potential amendments to the bill to delay its consideration beyond the legislative deadline, effectively killing it; however, an overwhelming number of Republican members had coalesced in support of the bill, and the Democratic opponents withdrew their proposed amendments at the last minute. Campus carry was then passed by the Texas House and signed into law by Gov. Abbott. The ultimate version of the bill included critical language not present in its original version, including an opt-out provision for private universities, the ability of all universities covered by the law to regulate implementation, including the creation of gun-free zones, and the requirement that each university’s board of directors approve or modify the university’s rules by a two-thirds vote.

C. Framework of the Texas Campus Carry Law

The novel aspect of the Texas law is the discretion it gives to individual universities to create campus-specific implementation rules, including regulation of handgun carry and the establishment gun-free zones—language that was added in the final stages of the law’s passage. The following two subsections explore, first, the overall structure of Texas’s new law as context, and second, the unique flexibility it provides in implementation.

1. General Structure

The Texas campus carry law is situated within a broader new statutory scheme for firearms in the state. Beginning August 1, 2016, “open carry” of firearms by license holders became the default background law, with limited exceptions for areas where weapons could not be carried. Among the areas excluded from open carry are the “physical premises of school[s] and educational institutions.” While open carry of firearms is not allowed in

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254 Chuck Lindell, Democrats Poised to Kill Campus Carry Bill, AUSTIN AMERICAN-STATESMAN (May 27, 2015).
255 Keith Herman, Even Time Abandons Outgunned Democrats, AUSTIN AMERICAN-STATESMAN (May 28, 2015).
256 Id.; Chuck Lindell, Guns-on-Campus Bill Given Senate Approval, AUSTIN AMERICAN-STATESMAN (May 31, 2015).
257 TEX. PENAL CODE § 46.03(a)(1)(b).
258 Id. § 46.03(a)(1)(b) (making it an offense to intentionally, knowingly, or recklessly carry a firearm onto the premises of an educational institution). Other areas where open carry of firearms is not allowed include polling places on election day, racetracks, secure areas of airports, and near official places of execution on the days of scheduled execution. Id. § 46.03(a)(2)-(6).
those locations, they were singled out for special treatment in the campus carry legislation that passed the same year.\(^{259}\)

Under this new campus carry law, covered Texas universities—all public universities and private universities that do not opt out—may not prohibit on their campuses the carrying of concealed handguns by license holders.\(^{260}\) Four-year universities were required to implement the law on August 1, 2016,\(^{261}\) and junior colleges had one year longer, until August 1, 2017,\(^{262}\) for implementation. All individuals, including students, staff, faculty, and guests who have been issued a license to carry by the Texas Department of Public Safety, fall within the scope of the statute.\(^{263}\) Their weapons must be kept “on or about the license holder’s person,” and concealed at all times.\(^{264}\) An individual loses the protection of the statute if her handgun becomes even partially visible, regardless of whether it is holstered.\(^{265}\)

“[C]ampus” has a broad meaning in the new law, including all land and structures owned or leased by the university.\(^{266}\) Prior to August 1, 2016 and since 1995, holders of concealed carry licenses in Texas could carry their weapons on outdoor property of universities, including sidewalks,

\(^{259}\) Id. § 46.03(a)(1)(b) (exempting from the penal code provisions an individual who possesses a license to carry under Texas law and carries his weapon in a concealed manner onto the premises of an educational institution).

\(^{260}\) TEX. GOV’T CODE § 411.029(c). Although the default open carry law in Texas extends to all firearms, including rifles and pistols, the campus carry law only covers handguns. As a result, rifles and shotguns are prohibited on university campuses in Texas.

\(^{261}\) Id § 411.208(Section 8)(b).

\(^{262}\) Id § 411.208(Section 8)(d). One of the reasons community colleges may have been given an additional year to implement the new law is because of complex issues relating to their student populations, including the large number of underage students who study at two-year institutions as part of dual credit programs with participating high schools. Mathew Watkins, Most Community Colleges Won’t Ban Guns in Classrooms with Minors, THE TEXAS TRIBUNE (March 2, 2017).

\(^{263}\) A person is entitled to receive a license to carry a firearm under Texas law if various statutory requirements are met. Specifically, an individual must: be a legal resident of the state for at least six months prior to application; be at least twenty-one years old; not be convicted of a felony; not have been charged with certain misdemeanors or their equivalents; not be a fugitive from justice; not be chemically dependent; not be incapable of exercising sound judgment with respect to the proper use and storage of a handgun; not have been convicted of committing certain misdemeanors within the past five years; qualified under federal and state law to purchase a firearm; not be delinquent in the payment of child support or taxes; not restricted under a court protective order or subject to a See restraining order affecting the spousal relationship; has not, within the past ten years, “been adjudicated as having engaged in delinquent conduct violating a penal law of the grade of felony.” TEX. GOV’T CODE § 411.172(a)(1)-(12).

\(^{264}\) Id. § 411.029(b).

\(^{265}\) TEX. PENAL CODE § 46.035(a-1).

\(^{266}\) TEX. GOV’T CODE § 411.2031(a)(1).
breezeways, and parking lots. The campus carry law extends the areas for concealed carry to all other non-excluded areas of campus, including classrooms, faculty and staff offices, cafeterias, hallways, lounges, libraries, conference and meeting rooms, and administrative areas. In other words, the concealed carry of handguns by license holders is allowed throughout all locations of college campuses implementing the law, unless the area is covered by some university exclusion or other limitation imposed by state or federal law.

Both Texas and the federal government do, in fact, prohibit the carrying of weapons in various locations and settings, including some that might overlap with college campuses. Under Texas law, for example, weapons are not allowed at polling places on election day; on the premises of government courts or offices used by courts; in the secured areas of airports; within 1,000 feet of premises designated as places of execution on the day of execution; at a correctional facility and on the premises of a civil commitment facility. Beyond those areas where firearms are flatly prohibited, Texas also allows the exclusion of properly licensed weapons in other specific settings if the license holder has been given proper notice, including on the premises of a business authorized to

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268 While there may have been some disagreement among legislators about whether the Texas law allows universities to generally prohibit weapons in classrooms, the Texas Attorney General’s Office has taken the position that it does not. See also Attorney General of Texas Opinion No. KP-0051 at 2 (December 21, 2015). Although recognizing that particular classrooms might be used for sensitive purposes such that weapons should be prohibited in those areas, it also made clear that if a university banned weapons in a “substantial number” of classrooms, the campus carry law would likely be violated. See id. at 1-2.

269 Although the Texas law does not expressly include an exclusion for offices, UT Austin has implemented a rule that allows employees who are “solely assigned to an office” to prohibit concealed carry in those areas, assuming that oral notice is provided to anyone who enters. See University of Texas at Austin website on Campus Carry at http://campuscarry.utexas.edu/faculty.

270 TEX. PENAL CODE § 46.03(a)(2).

271 Id. § 46.03(a)(3).

272 Id. § 46.03(a)(4).

273 Id. § 46.03(a)(5).

274 Id. § 46.03(a)(6).

275 Id. § 46.035(b)(3).

276 Id. § 46.035(b)(7).

277 Under TEX. PENAL CODE § 30.06, discussed infra, or TEX. PENAL CODE § 30.07.
sell alcohol;\textsuperscript{278} at a collegiate sporting event;\textsuperscript{279} on the premises of a state-licensed hospital or nursing home;\textsuperscript{280} at amusement parks;\textsuperscript{281} at a place of religious worship;\textsuperscript{282} and at meetings subject to the state’s Open Meetings Act.\textsuperscript{283} Federal law creates additional exclusion areas, prohibiting weapons at any “federal facility,” including presidential libraries, nuclear facilities, and multi-program research facilities.\textsuperscript{284} Furthermore, in addition to all of these areas of exclusion, a license holder commits a criminal offense if he carries a handgun in any location, regardless of whether it is concealed, while intoxicated.\textsuperscript{285} All these state and federal prohibitions trump the default right to campus carry in Texas.

The new Texas law affords universities the power to treat certain living areas differently, although the exact scope of that power may be uncertain.\textsuperscript{286} Universities may now enact rules relating to the storage of handguns in residential facilities, including dormitories, owned or leased by the institution and located on campus. The Texas Attorney General’s Office has interpreted this statutory language as empowering universities to regulate, short of prohibiting, gun storage in on-campus housing.\textsuperscript{287} However, in implementation, universities have split on this issue. Schools including UT Austin, the University of Houston, Texas Tech University, and Texas Southern University have enacted rules prohibiting gun storage in dormitories.\textsuperscript{288} Others, including Texas A&M University, Texas State University, the University of North Texas, and Stephen F. Austin State University, allow gun storage but take various approaches to regulation, including whether students must provide their own gun safes.\textsuperscript{289} Many other universities have chosen to remain silent on the issue of handgun storage or

\begin{itemize}
\item \textsuperscript{278} TEX. PENAL CODE § 46.035(b)(1) & TEx. PENAL CODE § 46.035(k).
\item \textsuperscript{279} TEX. PENAL CODE § 46.035(b)(2) & TEX. PENAL CODE § 46.035(l). An exception exists if the handgun is used by a competitor as a normal part of the sporting event. Tex. Penal Code § 46.03(b)(2).
\item \textsuperscript{280} TEX. PENAL CODE § 46.035(b)(4) & TEX. PENAL CODE § 46.035(i).
\item \textsuperscript{281} TEX. PENAL CODE § 46.035(b)(5) & TEX. PENAL CODE § 46.035(i).
\item \textsuperscript{282} TEX. PENAL CODE § 46.035(b)(6) & TEX. PENAL CODE § 46.035(i).
\item \textsuperscript{283} TEX. PENAL CODE § 46.035(c) & TEX. PENAL CODE § 46.035(i).
\item \textsuperscript{284} The Gun Control Act of 1968, Title 18 USC Chapter 44, §930. “Federal facility” is defined as any building or part of a building “owned or leased by the Federal Government, where Federal employees are regularly present for the purpose of performing their official duties.” Id. at § 930(g)(1).
\item \textsuperscript{285} TEX. PENAL CODE § 46.035(d)
\item \textsuperscript{286} See infra at ____ and accompanying notes.
\item \textsuperscript{287} Attorney General of Texas Opinion No. KP-0051 at 3 (December 21, 2015)
\item \textsuperscript{288} Mathew Watkins, With Texas Now a Campus Carry State, Here’s What You Need to Know, THE TEXAS TRIBUNE, August 1, 2016. Available at https://apps.texastribune.org/guns-on-campus/texas-now-campus-carry-state-what-you-need-to-know/. See infra at ___ and accompanying notes.
\item \textsuperscript{289} Id.
possession in student housing. Student housing facilities owned and operated by third parties, such as certain sorority- and fraternity-owned housing, fall outside the campus carry law and are exempt from university regulation.\footnote{See, e.g., UT Austin information page on campus carry: \url{http://campuscarry.utexas.edu/} (explaining that “S.B. 11 ‘covers concealed carry only on campus and the buildings owned or leased by the University. Fraternity and sorority houses are neither on campus nor owned or leased by the university. . . . and the University is not authorized to enact rules or regulations regarding concealed carry” in these locations).}

The concept of notice to license holders is critical in understanding the Texas campus carry law. Sometimes referred to as “30.06 notice” because of its location in the Texas Penal Code, proper notice must be given to license holders in at least two categories of situations. First, as described above, Texas law identifies a variety of locations, such as collegiate sporting events and places of religious worship, where weapons may be excluded, but only if proper notice has been given to license holders.\footnote{According to the Texas Government Code, a university “must give effective notice under Section 30.06, Penal Code, with respect to any portion of a premises on which license holders may not carry.” \textsc{Tex. Gov’t Code} § 411.2031(d-1).} Notice is proper if it complies with § 30.06.\footnote{See, e.g., \textsc{Tex. Penal Code} § 46.035(l) & (i) (requiring 30.06 notice if firearms are prohibited at collegiate sporting events, hospitals, nursing homes, places of religious worship, and at a location of any meeting subject to Texas’s Open Meetings Act).}

Second, whenever a university implements regulations that create areas on campus where concealed weapons may not be carried, thereby modifying the background rule of concealed carry on campus, proper notice under § 30.06 must be provided.\footnote{\textit{Id.} § 411.2031(d-1) (requiring that a university “give effective notice under Section 30.06, Penal Code, with respect to any portion of a premises on which license holders may not carry”).} Although such notice may technically be oral in nature,\footnote{\textsc{Tex. Penal Code} § 30.06(b). Although written and posted notice appears to be the norm, UT Austin requires oral notice where a sole occupant of an office chooses to exclude handguns. \textit{See} UT Austin website on Campus Carry at \url{http://campuscarry.utexas.edu/faculty}.} the most efficient way for universities to provide notice is through signage that complies with the statute’s very particular requirements: it must include the specific wording contained in the statute in both English and Spanish; it must be printed in block letters at least one-inch high with contrasting colors; and it must be displayed in a conspicuous manner that is easily viewable by the public.\footnote{\textsc{Tex. Penal Code} § 30.06(c)(3)(B).}

Without 30.06 notice, a license holder’s concealed carry in that area is not criminal.\footnote{\textsc{Tex. Penal Code} § 30.06(c)(3)(B).} However, if a license holder brings a concealed weapon
into an area where the weapon is lawfully prohibited, and proper notice of that prohibition has been provided orally or in writing complying with the statutory requirements, the individual commits a Class C Misdemeanor and is subject to a fine of up to $200.\textsuperscript{297}

In contrast, and providing an insight into gun priorities in Texas, a state entity that posts signage prohibiting concealed carry where it is legally allowed violates state law and is subject to a fine of at least $1,000 on the first day and up to $10,500 per day after that, with each day of wrongful posting a separate violation of the law.\textsuperscript{298} State law also allows individuals who believe that exclusion signage has been wrongfully posted to file complaints with the Texas Attorney General’s Office, which can then assess fines against the government entity if the signage defects exist and are not cured.\textsuperscript{299} Not surprisingly, a significant number of complaints has been filed with the Attorney General’s Office alleging improper exclusion of handguns, and that office has actively sought the removal of signs it believes were wrongfully posted at various locations across the state, including at the City of Austin’s City Hall and the Fort Worth Zoo.\textsuperscript{300} There are currently no reports of Attorney General investigations into allegedly defective 30.06 notices on college campuses in Texas, but universities must ensure that their exclusion signage is accurate and consistent with state law or risk significant fines.

Finally, the new Texas law extends previously existing qualified immunity to universities and university employees adopting campus carry. Section 411.208 of the Texas Government Code now grants immunity from

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  \item \textsuperscript{297} TEX. PENAL CODE § 30.06(d). The offense rises to a Class A Misdemeanor if the individual is given oral notice of the prohibition after entering the property but fails to leave. \textit{See id.}
  \item \textsuperscript{298} TEX. GOV’T CODE § 411.029(a)-(c). The statutory language creates two areas of potential notice jeopardy for universities. First, civil damages are triggered if a university attempts to prohibit handguns in areas where they may not be lawfully prohibited. \textit{See} Attorney General of Texas Opinion No. KP-0049 at 4 (December 21, 2015) (opining that “a court would likely construe section 411.209 to be implicated by any type of notice that seeks to improperly prohibit handguns”). Beyond civil damages, notice that does not comply with the Texas Penal Code would appear to be defective and, as a result, ineffective in prohibiting concealed carry in the relevant location. \textit{TEX. PENAL CODE § 30.06(b).}
  \item \textsuperscript{299} TEX. GOV’T CODE § 411.029(d)-(g).
\end{itemize}
Sane Gun Policy from Texas?

civil suit to those entities and individuals, shielding them from any damages associated with the actions of a handgun license holder. Consistent with preexisting law, that immunity does not extend to acts committed by a state employee that are arbitrary or capricious or to acts involving an official’s conduct involving his or her own handgun.

2. Individualized University Implementation Rules

At the heart of the Texas law is the power it gives university presidents to create and implement a regulatory plan for concealed carry on campus, up to and including the establishment of limited handgun exclusion areas. Rather than a one-size-fits-all approach, the law provides flexibility to each university to consider whether, and if so, how, the concealed carry of handguns is consistent with all aspects of each university’s operations. While the flexible implementation structure of the Texas law is unique and noteworthy, it is also circumscribed in a number of important ways.

The power to establish implementing regulations rests with each university president, rather than with other actors, such as individual staff or faculty members or an assigned committee. A recent Texas Attorney General’s opinion supports this reading of the new law, concluding that it does not allow faculty members or others to promulgate implementing rules. Rejecting the alternative of what it labeled potential “piecemeal” regulation of handguns on campus, the Attorney General’s Office did not read into

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301 TEX. GOV’T CODE § 411.208(a)-(b).
302 Id. § 411.208(d). The immunity provisions of the new law have been critiqued as still allowing suits for damages caused by individuals who do not possess licenses to carry, as well as negligence suits under the Clery Act. See Shaunda K. Lewis and Daniel Alejandro De Luna, Article: Symposium on “Texas Gun Law and the Future”: The Fatal Flaws in Texas’s Campus Carry Law, 41 T. MARSHALL L. REV. 135, 146-148 (2016).
303 TEX. GOV’T CODE § 411.208(d-1)(vesting the power to establish implementing rules with the “president or other chief executive officer” of each university and stating that “[t]he president or officer may amend the provisions as necessary for campus safety”). This rule promulgation structure driven by university presidents presumably extends to the creation of all campus carry-related regulations, even where the new law is not entirely clear. See, e.g., TEX. GOV’T CODE § 411.208(d)(stating that “[a]n institution of higher education or private or independent institution of higher education in this state may establish rules, regulations, or other provisions” relating to handgun storage in certain residential facilities). Nevertheless, this ambiguity leaves open the possibility that certain types of campus carry rules could be promulgated by another authority, such as a campus carry taskforce chairperson.
304 Attorney General of Texas Opinion No. KP-0051 at 2 (December 21, 2015). The reasoning of the Attorney General’s Office is unconvincing. The Office explains that the law’s requirement that implementation rules be distributed to all faculty, among others, suggests that the Legislature did not intend faculty to actually draft any of those rules. See id. In other contexts, faculties are tasked with promulgating all manner of rules relating to
the law any discretion to delegate each president’s rule-making power. As a result, while committees or taskforces formed to consider campus carry rules may operate in an advisory capacity, final responsibility for those rules rests with each university’s president.\textsuperscript{305} Any implementation discretion that other individual actors may exercise must flow from the university’s rules, established by the president.\textsuperscript{306}

The Texas law also identifies the stakeholder groups that must be consulted and the specific subjects that should be addressed in those consultations. In particular, the statute specifies that input should be solicited from students, staff, and faculty.\textsuperscript{307} Presumably, the Legislature intended this to be a listing of the stakeholders that must be consulted in some way, but other interested groups, including alumni, a community board of advisors, campus security staff, and local law enforcement personnel could and should also provide input during the rule formulation stage.

With guidance from students, faculty, and staff from their institutions, university presidents may consider three factors in evaluating possible regulations: the “nature of the student population, specific safety considerations, and the uniqueness of the campus environment.”\textsuperscript{308} The Legislature did not provide guidance about what these areas of inquiry were intended to encompass. As a result, and because the language chosen by the Legislature is relatively generic, these factors may be too vague to be of much assistance during the rule formulation process. For example, it may be

\textsuperscript{305} In fact, it appears that most Texas universities covered by the new law followed a similar pattern of creating an advisory committee of stakeholders that recommended a set of campus carry rules to the university president for consideration. See, e.g., The University of Texas at Austin Campus Carry Policy Working Group Final Report at 3 (December 2015), available at https://utexas.app.box.com/v/CCWorkingGroup-FinalReport (describing the establishment of the university’s Campus Carry Policy Working Group to provide policy recommendations); Update from Texas A&M University President Michael K. Young (April 13, 2016), available at http://www.tamu.edu/statements/campus-carry.html (explaining the process of receiving recommendations from his university’s Campus Carry Policy Task Force).

\textsuperscript{306} See infra at ___ and accompanying notes.

\textsuperscript{307} Tex. Gov’t Code § 411.2031(d-1).

\textsuperscript{308} Id.
Sane Gun Policy from Texas?

difficult to understand how the creation of specific gun rules might be guided in any meaningful way by evaluating the “nature of the student population” at most universities.309

However, at the very least, these factors do emphasize that each university’s rules must focus on the actual operations, students, and safety issues relevant to that particular institution. This focus excludes broader arguments, for instance, about whether guns should generally be allowed on university campuses. And by focusing on university-wide considerations, this statutory language appears to also exclude from consideration any personal arguments a student, staff member, or faculty member might raise seeking individualized treatment, most likely in the form of an exclusion, from a university’s general gun rules.310

The broad but university-specific factors that must be considered by each president provide universities significant flexibility to implement rules focused on their operations. Indeed, as discussed below, universities have used that flexibility to craft a wide range of gun-related regulations under the new law, addressing topics such as the proper storage of handguns in dormitories,311 the types of laboratories weapons may be carried into;312 whether handguns may be stored on campus overnight by faculty and staff;313 and areas of animal care facilities where weapons are prohibited.314

Although university presidents have the power to promulgate campus carry rules for their schools, the Texas law subjects those rules to an additional level of scrutiny. Within ninety days of the establishment of a

309 But see Shaundra K. Lewis and Daniel Alejandro De Luna, Article: Symposium on “Texas Gun Law and the Future”: The Fatal Flaws in Texas’s Campus Carry Law, 41 T. MARSHALL L. REV. 135, 144 (2016) (arguing that factors such as an unusually high level of stress on a university campus should justify stringent handgun limitations).

310 Some universities nevertheless see in the new law sufficient flexibility to allow the creation of individualized exclusion areas by employees, such as in the context of faculty offices that are assigned to one individual and not open to the public. See, e.g., The University of Texas at Austin Handbook of Operating Procedures 8-1060, Campus Concealed Carry VII.(c)(1), available at https://policies.utexas.edu/policies/campus-concealed-carry, (stating that “[t]he occupant of an office to which the occupant has been solely assigned and is not generally open to the public is permitted, at the occupant’s discretion, to prohibit the concealed carry of a handgun in that office.”).

311 See, e.g., Tarleton State University, Possession and Storage of Handguns in Tarleton State University On-Campus Residential Housing Facilities, available at https://www.tarleton.edu/finaladminweb/safety/handgun-policy.html.

312 See, e.g., Texas A&M University Standard Administrative Procedure 34.06.02.M1.01 5.2.2 (available at http://rules-saps.tamu.edu/PDFs/34.06.02.M1.01.pdf).

313 See, e.g., The University of Houston, Manual of Procedures 07.01.05, Campus Carry Policy, V.(A), available at http://www.uh.edu/af/universityservices/policies/mapp/07/070105.pdf.

314 See, e.g., The University of Texas at El Paso Concealed Handguns and Weapons Policy, Appendix A (Exclusion Areas).
university’s campus carry regulations by its president, the board of regents of that university must review the provisions.\textsuperscript{315} By a vote of two-thirds, the board may amend the university’s regulations in whole or in part.\textsuperscript{316} A university’s final regulations are those that are amended by its board of regents\textsuperscript{317} or, if no amendments exist, the set of rules promulgated by the university’s president.\textsuperscript{318} This layer of evaluation above the university level provides at least two benefits: First, it builds into the system an additional review of each university’s regulations to ensure compliance with the relevant statutes. And second, it allows the governing body for the university to review consistency of that school’s regulations with any other universities that are joined within a system of educational institutions under that board’s purview.\textsuperscript{319}

The most significant limitation on a university’s implementation of campus carry regulations is the statute’s admonition that those regulations may not generally prohibit or have the effect of generally prohibiting campus carry.\textsuperscript{320} The law is silent on where the line is between permissible regulation of weapons on campus, including the prohibition of concealed carry in certain locations, and regulations that go too far, resulting in the effective prohibition of campus carry. Certain activities and areas are likely to be considered at the core of a university’s operations and mission and may receive more careful scrutiny. Classrooms, for example, appear particularly sensitive for the Texas Attorney General. “[A]ttending or teaching class is the primary reason most individuals are on campus.”\textsuperscript{321} As a result, if a university prohibits concealed carry in a “substantial number of classrooms,” the Office of the Attorney General believes that a court would likely conclude that the school’s regulations would violate the campus carry law.\textsuperscript{322} But even in that context, the Attorney General recognized that the concealed carrying of weapons in certain classrooms, such as ones where grade school children are present, “may pose heightened safety concerns” justifying regulation of handguns in

\begin{footnotesize}
\textsuperscript{315}TEX. GOV’T CODE § 411.2031(d-2). For universities that do not have a formal board of regents, the statute gives the oversight power to whatever “governing board” might exist. See \textit{id.}

\textsuperscript{316}\textit{Id.}

\textsuperscript{317}\textit{Id.}

\textsuperscript{318}\textit{Id.} § 411.2031(d-1).


\textsuperscript{320}TEX. GOV’T CODE § 411.2031(c), (d-1).

\textsuperscript{321}See Attorney General of Texas Opinion No. KP-0051 at 1-2 (December 21, 2015).

\textsuperscript{322}\textit{Id.}
\end{footnotesize}
those areas.\footnote{Attorney General of Texas Opinion No. KP-0051 at 1 (December 21, 2015).}

Once a university promulgates its campus carry rules through its president’s office, and its board of regents amends or approves those rules, the Texas statutory scheme provides one additional requirement: Every two years, each university must compile a concealed handgun report for the Texas Legislature. Each report must include an explanation of the university’s handgun regulations and an explanation of the “reasons the institution has established those provisions.”\footnote{TEX. GOV’T CODE § 411.2031(d-4).} Presumably this mechanism allows the Legislature to monitor implementation of campus carry to ensure that each university’s rules do not have the effect of generally prohibiting concealed carry.

\section*{D. Observations on Early Implementation of Texas’s Campus Carry Law}

Campus carry in Texas has been implemented in a staged manner, with four-year colleges subject to the law’s provisions as of August 1, 2016, and community colleges as of August 1, 2017. A more complete perspective on the law’s implementation will be possible with time. However, below are several initial observations that flow from the first two years of the law’s enactment.

1. Public Sentiment Divided but Universities Generally Opposed

Despite its general reputation as a gun-friendly state, polling from 2015 found that only 47\% of those surveyed in Texas supported campus carry, and 45\% opposed it, with 8\% undecided.\footnote{Jim Henson & Joshua Blank, \textit{Reviewing Texas Attitudes Toward Campus Carry as Law Goes into Effect}, THE TEXAS POLITICS PROJECT AT THE UNIVERSITY OF TEXAS AT AUSTIN (August 1, 2016), available at \url{https://texaspolitics.utexas.edu/blog/reviewing-texas-attitudes-toward-campus-carry-law-goes-effect}; Ross Ramsey, \textit{UT/TT Poll: Voters Less Open to Open Carry}, THE TEXAS TRIBUNE (February 24, 2015), available at \url{https://www.texastribune.org/2015/02/24/uttt-poll-voters-less-open-open-carry/}.}\footnote{Henson & Blank, \textit{supra} note \___ (reporting that 48\% of respondents supported campus carry in 2013, and 47\% opposed it).} Polling from 2013 found a similar split in responses.\footnote{Id. (reporting that 55\% of those strongly supporting campus carry affiliated with the Tea Party).} Republican males were most likely to support concealed carry on campus, with respondents self-identifying as Tea Party members by far the strongest supporters.\footnote{Progress Texas, \textit{TX Poll on Campus Carry}, available at \url{http://progresstexas.org/poll/tx-poll-campus-carry} (finding that 72\% of respondents opposed...
the Texas campus carry law, as well as the broader open carry law in effect outside the campus context, 22% of Texans reported feeling more safe, while 37% reported feeling less safe, and 34% of respondents reported no change. In addition, most university chancellors and presidents, parents, students, professors, and campus security staff remain opposed to campus carry.

Beyond polls, another way to gauge support of a law is in the details of its implementation. In Texas, as in some of the other states that have adopted campus carry, the law applied to all public universities, but private universities were given the option to opt out. If they did not formally opt out, private universities in Texas would have been bound by the law. When given that option, private universities in Texas overwhelmingly rejected campus carry. Out of thirty-eight private universities in Texas, only one adopted campus carry: Amberton University. All of the other private universities in Texas, which include major research institutions such as Rice University and small, religiously affiliated schools like Lubbock Christian University, took affirmative steps to avoid campus carry. In the words of Rice University President, David Leebron, “there is no evidence that allowing the carrying of guns on our campus will make the campus safer.”

Amberton University, it is worth noting, is a relatively unusual university. This small, nonprofit school states that its enrollment is “limited to the mature, working adult” who seeks to complete an undergraduate degree. Many, if not most, of its courses are online, and the university


Henson & Blank, supra note _,

Michael S. Rosenwald, Guns Go to College: Everything You Need to Know About Campus Carry, The Washington Post (July 31, 2016) (reporting significant opposition to campus carry among staff and students at Texas Tech University), available at https://www.washingtonpost.com/news/local/wp/2016/07/30/everything-you-need-to-know-about-campus-carry/?utm_term=.504e72c5fb06; see also Inside the Fight, supra note _.


Amberton University, Campus Carry (Senate Bill 11), available at http://www.amberton.edu/help-and-advice/campus-carry.html.

Mathew Watkins & Madeline Conway, Only One Private Texas University Adopting Campus Carry, THE TEXAS TRIBUNE (July 29, 2016).

Id.

Amberton University, Campus Carry (Senate Bill 11), available at http://www.amberton.edu/help-and-advice/campus-carry.html. Enrollment at Amberton University is limited to adults twenty-one and older. See Mathew Watkins & Madeline
offers “no campus housing, no sporting events, no social clubs, and no dining facilities.” Furthermore, alcohol consumption on campus is prohibited. In light of “the unique nature of the Amberton student and the campus environment,” Amberton University chose to be covered by the campus carry law. Two additional schools, East Texas Baptist University and Southwestern Assemblies of God University, allow some faculty or staff to carry concealed weapons, but firearms are otherwise prohibited.

While the general sentiment on Texas university campuses is opposed to concealed carry, there are exceptions. For instance, the Texas A&M University Student Senate “overwhelmingly supports” the policy, and the Chancellor of the Texas A&M University System agrees. Explaining that campus carry “does not raise safety concerns for me personally,” the Chancellor said the issue boils down to a simple question: “Do I trust my students, faculty and staff to work and live responsibly under the same laws at the university as they do at home? Of course I do!”

As a result, even in a gun-friendly state, public opinion polls suggest tepid support, at most, for campus carry. And although some pockets of strong support exist for concealed carry within Texas universities, those with the option have overwhelmingly chosen to exclude themselves from the law.

2. Customized University Rules

The beginning stages of campus carry implementation across Texas public universities appear consistent with the legislature’s likely intent in this area: license holders have the general right to carry concealed weapons throughout the premises of public universities, but each institution has carved out exclusion areas and promulgated other regulations that reflect that school’s unique operations and priorities.

One broad area of uniform treatment is the traditional learning

Conway, Only One Private Texas University Adopting Campus Carry, THE TEXAS TRIBUNE (July 29, 2016).

Amberton University, Campus Carry (Senate Bill 11), available at http://www.amberton.edu/help-and-advice/campus-carry.html.

Id.

Mathew Watkins & Madeline Conway, Only One Private Texas University Adopting Campus Carry, THE TEXAS TRIBUNE (July 29, 2016).

Sam Peshek, Aggies, Texas A&M Faculty, Staff Split on Campus Carry Laws, THE EAGLE (March 6, 2015).


See Aric K. Short, Guns on Campus: A Look at the First Year of Concealed Carry at Texas Universities, TEXAS BAR JOURNAL (2017).
environment: No university generally prohibits guns in classrooms, despite the fact that the prospect of guns in the classroom generates significant concern among those opposed to campus carry. The Texas Attorney General’s Office, in a recent campus carry opinion, opined that because attending class and teaching are the primary reasons that most individuals are on campus, prohibiting concealed carry “in a substantial number of classrooms” would likely violate the new law. That opinion did recognize, however, that a limited number of classrooms might deserve special treatment if, for example, they were used for grade school classes, as well. In that case, regulation of campus carry in those locations would be justified because of “heightened safety concerns.” In fact, a number of universities have built similar exclusion zones into their implementation rules, prohibiting concealed carry in classrooms where elementary or high school students may be present.

University policies differ, however, when addressing the private office. Most universities do not give office occupants the ability to exempt themselves from general campus carry rules. This fact has caused significant concern among some faculty members who have expressed anxiety at the prospect, for example, of meeting in an office with a student who is upset about a grade, never knowing if the student might be carrying a weapon. That fear has led some faculty members and graduate students to consider online office hours or to hold them in off-campus locations that do not allow concealed weapons, such as restaurants and bars.

While some universities explicitly prohibit the creation of gun-free zones in offices, a number of universities, most notably UT Austin, do

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343 Id at 1-2 (2015).
344 See, e.g., The University of Houston, Manual of Procedures 07.01.05, Campus Carry Policy, available at http://www.uh.edu/af/universityservices/policies/mapp/07/070105.pdf; Stephen F. Austin State University, Concealed Carry on Campus, available at http://www.sfasu.edu/campuscarry/.
345 See Ian Bogost, The Armed Campus in the Anxiety Age, THE ATLANTIC (March 9, 2016). While this general concern is understandable, most universities did not screen for weapons at their entrances before campus carry went into effect. As a result, it has always been possible for someone to illegally enter a Texas university with a handgun.
346 Anna M. Tinsley, Concealed Handguns Allowed at Many Texas Colleges Starting Aug. 1, FORT WORTH STAR-TELEGRAM (July 30, 2016) (stating that some UTA professors may conduct “virtual” office hours after implementation of campus carry).
347 Lindsay Ellis, Austin Bars Provide Gun-Free Haven for UT Grad Students and Platform for Protest, HOUSTON CHRONICLE (February 14, 2017) (describing UT graduate students moving their office hours to the Cactus Café, which serves alcohol and, as a result, does not allow guns).
348 See, e.g., The University of Texas at Arlington, Campus Carry: Frequently Asked Questions (explaining that individual offices are not gun-free zones), available at
allow office occupants to prohibit concealed carry.\textsuperscript{349} Under that institution’s rules, a faculty or staff member who is solely assigned to a particular office may choose to prohibit the concealed carry of handguns there.\textsuperscript{350} For office occupants exercising that right to exclude, UT Austin requires that they provide oral, not written, notice to all visitors.\textsuperscript{351} Other University of Texas System schools, including The University of Texas at Dallas, the University of Texas at El Paso (UTEP), and the University of Texas at San Antonio (UTSA) follow a similar approach to that of UT Austin, allowing sole occupants of offices to provide oral notice excluding concealed carry in those locations.\textsuperscript{352} UTSA also states that notice, “[w]hen feasible,” should also be provided in writing;\textsuperscript{353} however, UT Austin and UTEP clearly state that written notice is inadequate to effectively ban handguns from offices.\textsuperscript{354} UTEP adds a unique detail to its policy, stating that if the excluding office occupant has as a part of his or her duties the regular interaction with individuals who may be license holders, the office occupant “must make reasonable accommodations to meet them in another location” other than the gun-free office.\textsuperscript{355} Texas Southern University also allows office occupants to ban handguns, assuming the office is “generally not open to the public.”\textsuperscript{356} Acceptable notice for that university includes written notice satisfying the statutory requirements.\textsuperscript{357}

Texas universities also approach the topic of gun storage in various ways. A significant number of universities explicitly require that licensed

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  \item The University of Texas, \textit{Campus Carry}, available at \url{http://campuscarr.utexas.edu/staff}; \url{http://campuscarr.utexas.edu/faculty}.
  \item Id.
  \item Id.
  \item The University of Texas at Dallas, \textit{Campus Carry Home}, available at \url{http://www.utdallas.edu/campuscarry/}; The University of Texas at El Paso, \textit{Campus Concealed Carry Information for Faculty}, available at \url{https://academics.utep.edu/Portals/1880/static/vpsa/CC_Faculty.pdf}; The University of Texas at San Antonio, \textit{Campus Carry Policy}, available at \url{https://www.utsa.edu/campuscarry/policy.html}.
  \item The University of Texas at San Antonio, \textit{Campus Carry Policy}, available at \url{https://www.utsa.edu/campuscarry/policy.html}.
  \item The University of Texas, \textit{Campus Carry}, available at \url{http://campuscarr.utexas.edu/staff}; \url{http://campuscarr.utexas.edu/faculty}; The University of Texas at El Paso, \textit{Campus Concealed Carry Information for Faculty}, available at \url{https://academics.utep.edu/Portals/1880/static/vpsa/CC_Faculty.pdf}.
  \item The University of Texas at El Paso, \textit{Campus Concealed Carry Information for Faculty}, available at \url{https://academics.utep.edu/Portals/1880/static/vpsa/CC_Faculty.pdf}.
  \item Texas Southern University, \textit{Campus Carry Policy MAPP Policy 04.06.29(IV)(A)(4.1)(x)}, available at \url{http://www.tsu.edu/mapp/pdf/operations-services/040629-campus-carry-policy.pdf}.
  \item Id.
\end{itemize}

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students in campus housing store their weapons in an appropriately secure safe.\textsuperscript{358} Six of those universities, including Texas A&M University, require those students to rent or purchase gun safes from the university,\textsuperscript{359} ensuring an acceptably secure gun safe for each gun-toting resident. An additional sixteen universities requiring gun safes for campus residents with licenses allow students to acquire their safes from other sources.\textsuperscript{360} Midwestern State University, for example, imposes the requirement that any gun safe acquired and used by a student to store a weapon in a campus residence must comply with federal law on what constitutes “secure gun storage.”\textsuperscript{361} Lamar University explicitly requires students to store handguns in gun safes in dormitories, and those safes must be approved by the university.\textsuperscript{362}

Other universities limit the presence of licensed handguns to areas where younger students are not present. For example, the University of Houston has identified all residential facilities as exclusion areas, other than one: Calhoun Lofts.\textsuperscript{363} That residence is available only to college juniors or other students who are at least twenty-one years old.\textsuperscript{364} One university, Texas Southern University, prohibits firearms in all residential facilities.\textsuperscript{365} Finally, if a university does not provide campus housing for students, the decision on whether firearms are allowed in student housing rests with the private company supplying that service.\textsuperscript{366}

\textsuperscript{358} \textit{E.g.}, Texas A&M University, \textit{Carrying Concealed Handguns on Campus} (2016); Texas A&M University at Texarkana, \textit{Carrying Concealed Handguns on Campus} (2016); Texas A&M University at Kingsville, \textit{Carrying Concealed Handguns on Campus} (2016); West Texas A&M University, \textit{Carrying Concealed Handguns on Campus} (2016); Midwestern State University, \textit{Carrying Concealed Handguns on Campus} (2016); Texas A&M University at Galveston, \textit{Carrying Concealed Handguns on Campus} (2016).

\textsuperscript{359} Texas A&M University, \textit{University Rule 34.06.02.M1(4)(B)} (August 1, 2016), available at http://rules-saps.tamu.edu/PDFs/34.06.02.M1.pdf.


\textsuperscript{364} \textit{See} The University of Houston, \textit{University Lofts}, available at http://www.uh.edu/housing/housing-options/university-lofts%20/.


\textsuperscript{366} \textit{See, e.g.}, Texas A&M University Corpus Christi, \textit{Rule 34.06.02.C1 – Carrying Concealed Handguns on Campus} at 2 (effective August 1, 2016), available at http://academicaffairs.tamucc.edu/rules_procedures/assets/34.06.02.C1_carrying_conceale
Beyond classrooms, offices, and residential areas, Texas universities have promulgated rules regulating, or more accurately prohibiting, handguns in a variety of settings. Those regulations reflect each university’s determination when campus carry is consistent with its operations and when an exclusion area must be carved out. For example, some but not all universities exclude weapons from athletic facilities such as gyms and practice fields.\textsuperscript{367} And although there is little clear consistency to their rules, Texas public universities have identified gun-free zones in a number of other areas, associated with especially sensitive locations or activities, including mental health treatment facilities;\textsuperscript{368} locations where elementary students might be present;\textsuperscript{369} places of religious worship;\textsuperscript{370} health care facilities;\textsuperscript{371} areas where the board of regents meets;\textsuperscript{372} dining halls;\textsuperscript{373} museums;\textsuperscript{374} counseling centers;\textsuperscript{375} the university post office;\textsuperscript{376} animal care facilities;\textsuperscript{377} a

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\item\textsuperscript{367} Compare Texas A&M University Corpus Christi, Rule 34.06.02.C1 – Carrying Concealed Handguns on Campus at 2-3 (effective August 1, 2016), available at http://academicaffairs.tamucc.edu/rules_procedures/assets/34.06.02.C1_carrying_concealed_handguns_on_campus.pdf (prohibiting concealed carry at the university tennis center, baseball and softball fields, gym, wellness center, locker rooms, sports building, and field house) with The University of Texas Campus Carry Information for Students, available at http://campuscarry.utexas.edu/students (prohibiting weapons at intercollegiate sporting events but silent on whether weapons in general athletic facilities are prohibited).
\item\textsuperscript{368} The University of Texas at El Paso, Campus Concealed Carry Exclusion Zones, available at http://sa.utep.edu/campuscarry/exclusion-zones/.
\item\textsuperscript{369} See, e.g., The University of Texas at Dallas, Campus Carry Home, available at http://www.utdallas.edu/campuscarry/
\item\textsuperscript{370} The University of North Texas, Policy 04.001 Carrying of Concealed Handguns on Campus at 3, available at http://policy.unt.edu/sites/default/files/04.001_CarryingOfConcealedHandgunsOnCampus_2016.pdf.
\item\textsuperscript{372} See Texas Woman’s University, Policy Number 3.02 Gun Free Zones (Campus Carry) at 3 (May 20, 2016).
\item\textsuperscript{373} See, e.g., The University of Texas at San Antonio, Campus Carry Policy, available at https://www.utsa.edu/campuscarry/policy.html.
\item\textsuperscript{374} Id.
\item\textsuperscript{375} See, e.g., Texas A&M University Corpus Christi, Rule 34.06.02.C1 – Carrying Concealed Handguns on Campus at 2-3 (effective August 1, 2016), available at http://academicaffairs.tamucc.edu/rules_procedures/assets/34.06.02.C1_carrying_concealed_handguns_on_campus.pdf
\item\textsuperscript{376} See Texas A&M University Commerce, Rule 34.06.02.R1 – Carrying Concealed Handguns on Campus at 3.3.7 (effective August 1, 2016), available at https://www.tamuc.edu/aboutUs/policiesProceduresStandardsStatements/rulesProcedures/3_4SafetyOfEmployeesAndStudents/34.06.02.R1.pdf.
\item\textsuperscript{377} See The University of Texas at El Paso, Campus Concealed Carry Exclusion Zones,
law school clinic; portions of libraries; university-owned automobiles; storage buildings where combustible items are stored; areas where alcohol is served; marine vessels; playgrounds; areas containing critical university infrastructure; certain laboratories; and in areas where formal disciplinary adjudications of students take place.

Universities have also developed processes to identify additional locations that might be designated, on either a permanent or temporary basis, as gun-free if the need arises. In particular, a number of universities allow their presidents to create temporary exclusion zones, sometimes with rule-based guidance on what circumstances would warrant such designations and sometimes without such guidance.

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378 See Texas A&M University Standard Administrative Procedure 34.06.02.M1.01 C.1.f. (available at http://rules-saps.tamu.edu/PDFs/34.06.02.M1.01.pdf).
379 The University of Texas at San Antonio, Campus Carry Policy, available at https://www.utsa.edu/campuscarry/history.html.
381 See The University of Texas at San Antonio, Campus Carry Policy, available at https://www.utsa.edu/campuscarry/policy.html.
382 See The University of Texas at San Antonio, Campus Carry Policy, available at https://www.utsa.edu/campuscarry/history.html.
383 See, Texas A&M University Standard Administrative Procedure 34.06.02.M1.01 C.1.g. (available at http://rules-saps.tamu.edu/PDFs/34.06.02.M1.01.pdf).
386 See The University of Texas at El Paso, Campus Concealed Carry Information for Faculty, available at https://academics.utep.edu/Portals/1880/static/vpsa/CC_Faculty.pdf.
388 See University of North Texas at Dallas, 12.006 Carrying of Concealed Handguns on Campus (2016); Midwestern State University, Carrying Concealed Handguns on Campus (2016); Angelo State University, Concealed Carry of Handguns on Campus (2017).
389 See The University of North Texas at Dallas, Policy 12.006 – Carrying of Concealed Handguns on Campus at 6, available at https://www.untdallas.edu/sites/default/files/page_level2/hsd0041/pdf/12.006_carrying_of_concealed_handguns_on_campus.pdf (giving factors that should be considered in determining whether a 72-hour exclusion zone should be established by the president, including whether the activity has a history of violence).
390 See Lamar University, Concealed Handgun Policy at V.6., available at https://www.lamar.edu/faculty-staff/policy/campus-carry/concealed-handgun-policy.html (stating that at the discretion of the president, “other Lamar University premises associated with temporary events involving safety considerations” may be designated gun-free zones).
firearm regulations under the law requires board of regents approval, it does not appear that any later safety-related designations must necessarily be approved beyond the level of the university’s president. This power to promulgate additional exclusion zones and handgun regulations appears based in the language of Texas’s campus carry law, which states that “the president may amend [the university’s campus carry rules] as necessary for campus safety.”

While the discretion given by the law to universities allows a more customized implementation of campus carry, it also leads to an inconsistent web of handgun regulations across public universities. However, the obligation that universities must provide statutory notice of any exclusion zones helps mitigate concerns about inconsistent rules between university campuses.

Comparison of campus-specific implementation rules also helps identify areas where uncertainty has been created. For instance, at least twenty-six universities are silent on the topic of whether, and if so, how, employees may store handguns on campus. A number of practical challenges arise because of this omission. For example, if a licensed employee moves into a campus location where guns are excluded, what should the employee do? Should the employee store the weapon in a gun safe in her office? In her desk drawer? If so, may she store it there overnight? Is she required to purchase a gun safe for her office? What if she shares office space with other co-workers who object to concealed carry? Because the basic structure of the new law puts the burden on the license holder to comply with properly-posted exclusion notices, presumably the general response to the above questions is simply, “The employee must figure out a way not to carry a concealed weapon into excluded areas.” That response does not address security and safety concerns that might arise for the broader university community, however, depending on how an employee chooses to comply with the university’s regulations.

In all, however, a detailed look at how Texas’s public universities have initially implemented campus carry reflects that universities have, for the most part, thoughtfully assessed their student populations, safety concerns, and campus environments, and then determined how to overlay concealed carry onto their operations. In doing so, they have created firearm

391 TEX. GOV’T CODE § 411.2031(d-1).
392 Id. (requiring that a university “give effective notice under Section 30.06, Penal Code, with respect to any portion of a premises on which license holders may not carry”).
393 See Stephen F. Austin State University, Campus Carry Quick Information (2016); Sam Houston State University, Concealed Carry Campus Policy (2016); Lamar University, Concealed Handgun Policy, http://facultystaff.lamar.edu (last visited July 17, 2017); West Texas A&M University, Carrying Concealed Handguns on Campus (2016); The University of Texas at Austin, Handbook of Operating Procedures: Campus Concealed Carry (2016).
regulations, including exclusion zones, that fit their needs, while not “generally prohibiting license holders from carrying concealed handguns.”

3. Potential Free Speech Issues

Crafting gun policy frequently brings competing rights and freedoms into conflict. Navigating that tension can be an enormous challenge. One area where such conflict may exist under current university rules relates to free speech. Under Texas law, license holders are required to present both their official identification, such as their driver’s license, and their handgun license if they are requested by a peace officer to provide identification when they are carrying their weapon. Because Texas law is silent on whether license holders are obligated to disclose their license status in any other setting or to any other person, it is assumed that no such obligation exists.

Several Texas schools have addressed this topic in their campus carry rules, specifically limiting inquiries into individuals’ status as license holders. For example, Texas Tech University states that employees, other than members of law enforcement “may not, under any circumstances, require students or employees to disclose their concealed carry license status.” The University of Texas – Rio Grande has adopted a rule with similar language. Texas A&M University’s version states that “[u]niversity administrators, faculty, staff and students should not request individuals to indicate whether they have a license.

Without official explanation of these policies, it is unclear exactly what concern is motivating the universities. Perhaps because license holders are not legally required to disclose their status other than to peace officers, and because the possibility exists that license holders might feel singled out or intimidated if they were asked to voluntarily identify themselves, the universities have adopted policies that limit such inquiries. But in doing so, the universities may be seen as proscribing or discouraging, depending on the rule, speech that is not prohibited by law. These policies target content-

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394 TEX. GOV’T CODE § 411.2031(d-1).
395 Id. § 411.205 (2017).
398 Texas A&M University Standard Administrative Procedure 34.06.02.M1.01, § 3 (available at http://rules-saps.tamu.edu/PDFs/34.06.02.M1.01.pdf).
399 License status is also exempt from disclosure under the Public Information Act. Department of Public Safety FAQs, available at https://www.dps.texas.gov/RSD/LTC/faqs/index.htm.
related expression, and may, at the very least, have a chilling effect on the free speech of employees or students. To the extent there is a compelling governmental interest involved, which seems questionable, it seems likely that more narrowly tailored means to achieve those goals are possible. For example, a university concerned about intimidation of license holders could prohibit any adverse impact on a student or employee because of her status as a license holder.

4. Post-Implementation Reaction

Prior to the initial implementation of campus carry in Texas on August 1, 2016, significant concerns existed about the new law. On the legal front, three UT Austin professors filed suit against their university and the state, arguing that the law was an “overly solicitous, dangerously-experimental gun polic[y],” and that it violated both the First and Second Amendments to the U.S. Constitution. The American Association of University Professors, joined by the Giffords Law Center to Prevent Gun Violence and the Brady Center to Prevent Gun Violence, filed an amicus brief in support of the plaintiffs’ claims. Among the arguments made by the plaintiffs in that case was that the “possibility of the presence of concealed weapons in a classroom impedes [their] ability to create a daring, intellectually active, mutually supportive, and engaged community of thinkers.” In his ruling, Judge Lee Yeakel of the Western District of Texas described the plaintiffs’ standing claim as one “based on their self-imposed censoring of classroom discussions caused by their fear of the possibility of illegal activity by persons not joined in this lawsuit.” Concluding that the professors had not provided any “concrete evidence to substantiate their fears,” and because any alleged injury to them was not traceable to any conduct by the defendants, Judge Yeakel dismissed the lawsuit for failure to

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405 Id.
state a claim. Judge Yeakel’s opinion did not address the plaintiffs’ Second Amendment or Equal Protection claims.  

Among the concerns raised by plaintiffs in their case was the chilling effect that campus carry would have on class content and discussions: that professors would avoid controversial subjects or points of view, fearful that a student upset with the discussion might draw a concealed weapon. Professors also frequently deal with students in emotional crisis because of school problems, failed exams, cheating allegations, or general life pressures, and the dangers associated with those crises become heightened in a world of concealed carry. Many faculty members report being anxious or fearful of how the new law will impact them personally and professionally, as well as how it will affect their classrooms and student interactions. The faculty senate of the University of Houston, apparently in response to that anxiety, created a presentation for faculty there suggesting that they “may want to” take various steps in response to the new campus carry law, including “drop[ping] certain topics from [the] curriculum”; and only meeting “‘that student’ in controlled circumstances.”

We now have some preliminary information on what impacts, if any, might be felt on academic freedom as a result of campus carry. In a study performed by Joslyn Krismer, a Ph.D. candidate at UT Austin, she polled faculty members at a “large Southern research institution” about their attitudes towards campus carry and how the prospective law would affect their teaching. Seventy-one percent of faculty agreed that campus carry laws “will have a negative impact on the free and robust exchange of ideas at the university.” However, fifty-three percent of professors reported that their

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406 Id.
409 Steven J. Friesen, I’m a Professor in Texas and I’m Worried About Students Who Can Now Carry Guns in My Class, PUBLIC RADIO INTERNATIONAL (August 18, 2016).
410 Sharon Grigsby, Response at University of Houston is Exactly Why We Feared Campus Carry, DALLAS MORNING NEWS (February 2016), available at https://www.dallasnews.com/opinion/opinion/2016/02/23/university-of-houston-response-is-exactly-why-we-feared-campus-carry-in-texas.
411 It is unknown whether this survey was definitely conducted in Texas, but the location of the researcher and the timing of the study, just as campus carry became law in Texas, strongly suggest that it was. Colleen Flaherty, Not in My Classroom, INSIDE HIGHER ED (April 28, 2017), available at https://www.insidehighered.com/news/2017/04/28/study-professors-widely-oppose-campus-carry-inimical-academic-freedom-fewer-would.
412 Id.
approach to teaching controversial or emotional topics would not change.\footnote{Id.} And fifty-eight percent reported that they would not omit course content because of the new law.\footnote{Id.} Forty percent of professors reported that they would “tone down” their normal approach when dealing with sensitive or controversial subjects.\footnote{Id.} Female professors were slightly more opposed to campus carry than their male colleagues, and Asian professors were more likely to report that they would change their course coverage or teaching style because of the law.

Superficially, these data may suggest that concerns voiced by campus carry opponents about its impact on the classroom environment, course content, or teaching style may be overblown. However, there are reasons not to draw too many definitive conclusions from this preliminary information. First, assuming the survey was conducted at UT Austin, it was administered just before the new law went into effect.\footnote{The survey appears to have been distributed to faculty members in the spring of 2016, before the law went into effect on August 1, 2016. See id.} As a result, while the survey may reflect what faculty members expected the impact of campus carry would be on their teaching and course coverage, it may not reflect what the effect actually was. In addition, while there was a relatively even split between faculty members who believed that campus carry would change their coverage and teaching and those who did not, there was also a significant number of “unsure” responses.\footnote{Approximately fifteen to eighteen percent of respondents were uncertain whether, and if so, how, campus carry might impact their classrooms. In addition, further research should be conducted about the impact of campus carry on the classrooms of minority and female teachers so we can better understand the law’s effect. And finally, the question of whether a professor’s course coverage changes after implementation of campus carry is separate from the question of whether the law creates concern and worry on the part of professors. See Not in My Classroom, supra note ___.} The answer to the latter question is clearly yes for many faculty members. Countless faculty members have expressed significant apprehension about allowing guns into their classrooms and offices, and many have talked and written about the combustible environment they inhabit in higher education, one in which high student pressure often mixes with depression, anxiety, and alcohol and drug use. Inserting more guns into that environment, they argue, is a recipe for disaster. The anxiety those faculty members feel every day walking into a

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\item The survey appears to have been distributed to faculty members in the spring of 2016, before the law went into effect on August 1, 2016. See id.
\item One professor explained that professors may be “scared stiff” about the prospect of having guns in their classrooms, but “on principle refuse to change” their interactions with students. Id.
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campus carry environment is real. Beyond potential and actual impacts on the classroom learning environment, the Texas campus carry law has led to faculty resignations, withdrawals of candidates for teaching and administrative positions, decisions by prospective students not to apply, and rescission of acceptances by visiting faculty and guest speakers.\footnote{See generally, Eleanor Dearman & W. Gardner Selby, Professor: ‘Concrete examples’ of Teachers Students Spurning University of Texas Due to Gun Law, POLITIFACT TEXAS (August 26, 2016), available at http://www.politifact.com/texas/statements/2016/aug/26/lisa-moore/professor-concrete-examples-teachers-students-spur/; The Impact of Campus Carry: Recruitment, Retention, Reputation Damage, http://gunfreeut.org/resources/impact-of-campus-carry/ (listing a variety of harms that have flowed from Texas’s adoption of campus carry, including impacts on hiring and retention at universities and decisions by guest lecturers and performers to decline invitations to appear at Texas schools);} The most well-known example was Fritz Steiner, who resigned after fifteen years as dean of UT Austin’s College of Architecture.\footnote{Matthew Watkins, UT Architecture Dean Cites Campus Carry as a Reason for Departure, THE TEXAS TRIBUNE (February 25, 2016).} According to Dean Steiner, who then accepted a deanship at the University of Pennsylvania, “I would have never applied for another job if not for campus carry.”\footnote{Id.} In another well-publicized example, Siva Vaidhyanathan, a professor of media studies at The University of Virginia, withdrew from being considered as a finalist for the position of dean at the Moody College of Communication at UT Austin.\footnote{Ralph K.M. Haurwitz, Campus Carry Law Kept This Scholar from Pursuing a Deanship at UT, AUSTIN AMERICAN-STATESMAN (February 18, 2016).} Describing the “chilling effect” that campus carry would have on the classroom learning environment, Prof. Vaidhyanathan said he would likely side with concerned faculty members who wanted guns excluded from their classrooms.\footnote{Id.} Because in that case he would be “fired immediately,”\footnote{Id.} he withdrew his name for further consideration in the dean search process at UT Austin.\footnote{Eleanor Dearman & W. Gardner Selby, Professor: ‘Concrete examples’ of Teachers Students Spurning University of Texas Due to Gun Law, POLITIFACT TEXAS (August 26, 2016), available at http://www.politifact.com/texas/statements/2016/aug/26/lisa-moore/professor-concrete-examples-teachers-students-spur/} Among the other lost candidates for faculty or administrative positions in Texas as a result of campus carry are Thomas C. Sudhof, a Stanford University Nobel Laureate who declined a position at UT-Southwestern; Robin Bernstein, a professor and chair at Harvard University, who declined a senior chair position at UT Austin; Daniel Hammermesh, economics professor emeritus at UT Austin, who resigned that position and moved to the Royal Holloway University of London; and Kimberly Tallbear-Dauphine, associate professor
of anthropology at UT Austin, who resigned and took a position on the faculty at the University of Alberta.\footnote{426}{The Impact of Campus Carry: Recruitment, Retention, Reputation Damage, http://gunfreeut.org/resources/impact-of-campus-carry/}

Finally, the first stages of campus carry implementation have gone smoothly and have had relatively little impact on campuses across the state. During the first year of campus carry, there were no intentional shootings on university property by any license holders, and just one accidental discharge that occurred at Tarleton State University, with only minor property damage.\footnote{427}{Emma Platoff, After a Quiet Year of Campus Carry, Community Colleges Get Guns Next, THE TEXAS TRIBUNE (August 1, 2017), available at https://www.texastribune.org/2017/08/01/campus-carry-one-quiet-year/} The first year of campus carry saw, in general, no significant increase in gun violence, or violence at all, on university property. For example, at Texas Tech University in the year prior to campus carry, there were five gun-related incidents on campus; there were six in the twelve months following implementation of campus carry.\footnote{428}{Id.} University officials overseeing implementation of the new law voiced nearly identical reactions to the first year of allowing concealed carry on campus: “very smooth[] and without incident”;\footnote{429}{Id. (quoting Harry Battson, Tarleton State University Assistant Vice President for Marketing and Communications).} “virtually no impact at all”;\footnote{430}{Id. (quoting Chris Meyer, Texas A&M University).} “amazingly quiet”;\footnote{431}{Id. (Lawrence Schovanec, Texas Tech University president).} “I expected it to be largely uneventful, and those expectations were largely borne out.”\footnote{432}{Id.} These Texas experiences are consistent with those of other states, where campus carry implementation has been relatively quiet with “little noticeable impact.”\footnote{433}{Dave Phillips, What University of Texas Campus is Saying About Concealed Guns, NEW YORK TIMES (August 27, 2016).} In addition, while there had been some initial estimates that complying with the law might cost around $50 million across Texas universities, the actual cost appears dramatically lower.\footnote{434}{Anna M. Tinsley, Campus Carry in Texas: At What Cost?, FORT WORTH STAR-TELEGRAM (September 28, 2016), available at http://www.star-telegram.com/news/politics-government/article102651657.html} For example, the estimated cost of implementing campus carry in Tarrant County, Texas, has been just $20,000.\footnote{435}{Id.} And a spokesman for The University of Texas System, which had projected campus carry costs of approximately $39 million, described the system’s actual costs as “minimal.”\footnote{436}{Id.}
V. CONCLUSION

Recent data show that liberalized gun laws do not increase public safety; just the opposite. Nevertheless, a clear wave of momentum exists across the country in favor of campus carry. While various options exist for states considering implementation of campus carry, the extremes are problematic. Statutes that allow universities to completely opt out of the law will result, experience across the country shows, in the vast majority of schools not allowing guns on campus. On the other hand, statutes that impose a rigid framework on universities do not allow for exceptions based on each school’s operations. The recent Texas campus carry law is an exception to these extreme approaches and embodies a compromise: the underlying right to concealed carry exists on university premises, but each school has the power to create a customized implementation plan that identifies areas where handguns are not allowed. Early stages of implementation in Texas show that this model is working well: universities have promulgated reasonable regulations, including establishing limited gun-free zones, that reflect their unique operations, campus populations, and safety concerns. And they have done so with little administrative difficulty or financial expenditure, although there have been losses of small numbers of talented faculty and administrators opposed to the law. At a time of entrenched, polarizing opinions about gun policy, the Texas statutory framework provides a balanced middle-ground that should serve as a blueprint for other states planning to adopt campus carry.