

Crossfire on Compulsory Campus Carry Laws: When the First and Second Amendments Collide

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ABSTRACT: Despite college communities' overwhelming opposition to firearms on campuses, states are continuing to pass legislation forcing public higher education institutions to permit the secret carrying of firearms inside academic buildings and classrooms at an alarming rate. Many students, faculty, and administrators believe the presence of firearms will stifle their First Amendment right to free speech and academic freedom, as the mere presence of firearms will create an uncomfortable learning and working environment. Additionally, it will make some professors and students more reticent to discuss controversial and sensitive issues out of fear that heated debates could become violent. On the other hand, campus carry proponents maintain they have a Second Amendment right to carry a firearm for self-defense. Thus, the campus carry issue raises two competing constitutional claims. This Article is one of the first to posit that the First Amendment rights to free speech and academic freedom trump the Second Amendment right to bear arms in the campus carry context. In making this case, Part II identifies the states with campus carry laws and shows how there is a frightening trend toward arming campuses. Part III cogitates several First Amendment challenges that could be mounted against this legislation. Part IV contemplates the Second Amendment argument that individuals have a right to carry on campus for self-protection. Part V explains why the First Amendment claim should prevail. Finally, Part VI provides guidance on how to survive on an armed campus.

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“Even to the extent one considers bearing arms desirable, speech remains more important for individuals and society: How many avid hunters would give up communication before they gave up hunting?”¹

I. INTRODUCTION

The issue of whether concealed handgun licensees (“CHLs”) should be permitted to carry firearms inside higher education academic buildings (including classrooms) has been vociferously debated over the past decade.²

1. Gregory P. Magarian, *Speaking Truth to Firepower: How the First Amendment Destabilizes the Second*, 91 TEX. L. REV. 49, 57 (2012).

2. See Ryan Phillips, *Georgia Governor Vetoes ‘Campus-Carry’ Concealed Gun Bill*, ASSOCIATED PRESS (May 3, 2016, 2:39 PM), <http://www.seattletimes.com/nation-world/georgia-governor-vetoes-campus-carry-concealed-gun-bill> (reporting that all 29 of Georgia’s public college and university presidents and their police chiefs oppose a proposed campus carry bill); *Point Blank: Guns Don’t Belong on College Campuses—Here’s Why*, PUBLICHEALTHWATCH (Mar. 10, 2014), <https://publichealthwatch.wordpress.com/2014/03/10/point-blank-guns-dont-belong-on-college-campuses-heres-why>. As a testament to how visceral the campus carry debate has become, the Students for Concealed Carry organization personally attacked a University of Houston professor’s character on their website for opposing campus carry by pointing out an old domestic violence report that was filed against him. Admin, *Does a Prominent Anti-Campus Carry Activist Have a History of Violence Against Women?*, STUDENTS FOR CONCEALED CARRY (Mar. 21, 2016), <http://concealedcampus.org/2016/03/anti-campus-carry-advocate-history-of-violence-against-women>.

Yet, despite the numerous voices expressing fervent dissent to such a measure, some state legislatures have passed laws mandating the allowance of firearms in classrooms as a measure taken to prevent school shootings and other campus violence.³ These laws, hereinafter referred to as “compulsory campus carry laws,” put public higher educational institutions in a conundrum—either: (1) follow a law that the overwhelming majority on campus disagree with;⁴ or (2) disobey the law by continuing to ban firearms and potentially risk a reduction in state funding or another financial penalty.⁵

But campus carry laws implicate more than just Second Amendment rights. American colleges and universities, and the students and faculty that inhabit them, enjoy special protections designed to protect the ability to teach and learn freely.⁶ Requiring the allowance of firearms in classrooms and academic buildings will have a chilling effect on academic speech in many different ways, including students’ in-class expression, professor and student engagement, professor and professor interaction, and administrator and professor relations. Accordingly, campus carry laws may violate First Amendment protections of academic freedom.

For example, knowing that a student may be concealing a firearm could cause a professor to feel uncomfortable giving a student a failing grade because this could result in a violent confrontation, and even death.⁷ Indeed, it is not outside the realm of possibility for a student to shoot a professor over a grade. In 2002, a disgruntled Appalachian School of Law student who was academically dismissed shot and killed one of his law professors and the law

3. See Firmin DeBrabander, *Campus Carry vs. Faculty Rights*, INSIDE HIGHER ED (Mar. 19, 2015), <https://www.insidehighered.com/views/2015/03/19/essay-movement-allow-guns-campus-violates-academic-freedom>.

4. See James H. Price et al., *University Presidents’ Perceptions and Practice Regarding the Carrying of Concealed Handguns on College Campuses*, 62 J. AM. C. HEALTH 461, 463 (2014) (finding in a scientific study that 95% of 401 college and university presidents randomly surveyed were unsupportive of the idea of students, faculty, and visitors carrying concealed firearms on campus, and that “most faculty (92%) and students (89%) would feel unsafe if faculty, students, and visitors carried concealed handguns on campus”).

5. See Kathy L. Wyer, Note, *A Most Dangerous Experiment? University Autonomy, Academic Freedom, and the Concealed-Weapons Controversy at the University of Utah*, 2003 UTAH L. REV. 983, 987 (describing how the University of Utah’s refusal in 2001 to implement Utah’s campus carry law resulted in a senator introducing a bill to reduce the University president’s salary by half).

6. *Id.* at 1008–16.

7. Manny Fernandez & Dave Montgomery, *Texas Lawmakers Pass a Bill Allowing Guns at Colleges*, N.Y. TIMES (June 2, 2015), <https://www.nytimes.com/2015/06/03/us/texas-lawmakers-approve-bill-allowing-guns-on-campus.html> (“Professors said they worry about inviting a student into their offices to talk about a failing grade if they think that student is armed.”); Alexandria Samuels, *University of Texas Dean Resigns Over Campus Carry Concerns*, USA TODAY C. (Feb. 28 2016, 11:21 AM), <http://college.usatoday.com/2016/02/28/ut-dean-resigns-campus-carry> (reporting how the University of Texas’s Professor Emeritus Daniel Hamermesh resigned because of Texas’s Campus Carry Law, stating in his resignation letter that “my perception is that the risk that a disgruntled student might bring a gun into the classroom and start shooting at me has been substantially enhanced by the concealed-carry law”).

school dean.⁸ A law permitting students with CHLs to carry firearms into classrooms increases the chances of this happening again on a college campus, especially at a law school, where nearly all of the students are 21 years of age or older and satisfy the CHL age requirement.⁹

The presence of guns could also negatively affect interactions between professors as well as faculty governance. For instance, faculty members may be less likely to cast negative votes on important issues like tenure out of fear of being shot. Consider the case of the University of Alabama professor who found the denial of tenure so calamitous that she murdered some of her colleagues during a department meeting.¹⁰ Legislation authorizing professors to carry concealed firearms arguably increases the likelihood of a retaliatory shooting for adverse employment actions, which has a chilling effect on speech.

Finally, students who feel uncomfortable in the presence of firearms may be afraid to freely engage in debates over controversial issues. This sort of self-censoring is antithetical to a university's educational mission. At least one prospective law student has acknowledged that knowing most of his classmates may be carrying a firearm "would increase [his] fear of speaking freely."¹¹

On the other hand, supporters of compulsory campus carry laws argue that CHL holders have a Second Amendment right to carry a firearm on public college campuses for self-protection in the event of a mass shooting.¹² If someone was trapped in a classroom with nowhere to escape and heard a gunman approaching, would they not want a firearm or a "good guy" in the room with a gun to stop the assailant?¹³ Thus, compulsory campus carry laws raise two very important yet competing constitutional claims—the First Amendment right to academic freedom and free speech versus the Second Amendment right to carry guns for self-defense. Which constitutional right should prevail? None of the existing scholarship addresses this issue, and this Article fills in that gap.

8. Helen Hickey de Haven, *The Elephant in the Ivory Tower: Rampages in Higher Education and the Case for Institutional Liability*, 35 J.C. & U.L. 503, 514 (2009).

9. See, e.g., OR. REV. STAT. ANN. § 166.291(1)(b) (2015) (requiring individuals to be at least 21 years old to obtain a CHL license); TEX. GOV'T CODE ANN. § 411.172(a)(2) (West 2016) (same); WIS. STAT. § 175.60(3)(a) (2016) (same).

10. Sarah Wheaton & Shalia Dewan, *Professor Said to Be Charged After 3 Are Killed in Alabama*, N.Y. TIMES (Feb. 12, 2010), <http://www.nytimes.com/2010/02/13/us/13alabama.html>.

11. Wyer, *supra* note 5, at 1016; Andrew Wilson, *Why I Wouldn't Go to the University of Texas Law School*, NATION (May 5, 2016), <http://www.thenation.com/article/why-i-wouldnt-go-to-the-university-of-texas-law-school>.

12. See Kaitlin Mulhere, *Momentum for Campus Carry*, INSIDE HIGHER ED (Mar. 30, 2015), <https://www.insidehighered.com/news/2015/03/30/push-concealed-guns-campus-gaining-steam>.

13. Wayne LaPierre, CEO of the National Rifle Association, once famously said "[t]he only thing that stops a bad guy with a gun is a good guy with a gun." Mark Memmott, *Only 'a Good Guy with a Gun' Can Stop School Shootings, NRA Says*, NPR (Dec. 21, 2012, 10:45 AM), <http://www.npr.org/sections/thetwo-way/2012/12/21/167785169/live-blog-nra-news-conference>. This is a philosophy that seems to have been adopted by the state legislatures proposing campus carry laws.

Specifically, this Article argues that, on a college campus, the tension between First and Second Amendment rights ought to be resolved in favor of the First Amendment's protections of academic freedom and free speech. Part II describes the different variations of campus carry legislation and identifies which states have compulsory carry laws. Part III explores First Amendment doctrines that could be used to challenge campus carry legislation, including the novel argument that campus carry laws unconstitutionally compel speech in favor of guns. Part IV examines and debunks the Second Amendment argument that individuals have a right to carry on campus for self-defense. Part V suggests that courts should resolve the tension between the First Amendment's protection of academic freedom and free speech and the Second Amendment right to bear arms in favor of greater protection for unrestricted speech on college campuses. Finally, Part VI provides practical advice for colleges and universities that have been legislatively forced to adopt campus carry on their campuses.

II. STATES IMPOSING BULLETS AND BOOKS BY LEGISLATIVE FIAT

There are generally three categories of campus carry legislation: (1) prohibitory campus carry laws that completely forbid firearms on public college and university campuses; (2) discretionary campus carry laws that permit, but do not require, postsecondary schools to allow CHLs to carry; and (3) compulsory campus carry laws—those forcing institutions to permit CHLs to carry on campus (including inside buildings and classrooms) whether they desire to do so or not.¹⁴ The last category is the focus of this Article, as there appears to be a burgeoning movement toward forcing higher education institutions to permit firearms.

In 2011, there were 29 states that expressly prohibited firearms, 19 states that left it to the higher education institutions' discretion to proscribe guns, and one state (Utah) that had a compulsory campus carry law.¹⁵ Additionally, at that time, at least 12 jurisdictions were considering enacting some variance of a campus carry law permitting CHLs to carry a firearm or other weapon on campus to protect themselves.¹⁶

In the past five years, the campus carry legislative landscape has changed dramatically. Nine states that banned firearms prior to 2011 have loosened those bans and now permit and, in some instances, require public postsecondary institutions to allow the carrying of concealed firearms in some

14. Shaundra K. Lewis, *Bullets and Books by Legislative Fiat: Why Academic Freedom and Public Policy Permit Higher Education Institutions to Say No to Guns*, 48 IDAHO L. REV. 1, 4-8 (2011).

15. *Id.* at 5-8.

16. *Id.* at 9-10.

fashion. Those states include Arkansas,¹⁷ Colorado,¹⁸ Idaho,¹⁹ Kansas,²⁰ Mississippi,²¹ Oregon,²² Tennessee,²³ Texas,²⁴ and Wisconsin.²⁵ Of these states,

17. ARK. CODE ANN. § 5-73-322(b)-(c) (2016) (allowing CHLs who are “staff member[s],” but not students, to “possess a concealed handgun in the buildings and on the grounds . . . owned or leased by the public university, public college, or community college . . . where he or she is employed unless otherwise prohibited . . . if . . . [h]e or she is a staff member[] and . . . [t]he governing board . . . does not [have] a policy expressly disallowing the carrying of a concealed handgun . . . and posts notices”). A “[s]taff member” is defined as “a person who is not enrolled as a full-time student at the university, college, or community college and is either employed by the university, college, or community college full time or is on a nine-month or twelve-month appointment at the university, college, or community college as a faculty member.” *Id.* § 5-73-322(a)(2). Simply put, employees at public colleges and universities may carry concealed firearms in this state.

18. COLO. REV. STAT. § 18-12-214(1)(a) (2016) (“A permit to carry a concealed handgun authorizes the permittee to carry a concealed handgun in all areas of the state, except as specifically limited in this section.”). Nowhere in that section does it exempt college and university campuses. *Id.*

19. IDAHO CODE § 18-3309(1)-(2) (2016) (precluding “[t]he board of regents of the university of Idaho” and other state colleges and universities from “regulating or prohibiting the otherwise lawful possession, carrying or transporting of firearms or ammunition by persons licensed”).

20. KAN. STAT. § 75-7c20 (2015) (“The carrying of a concealed handgun shall not be prohibited in any state or municipal building unless such building has adequate security measures to ensure that no weapons are permitted to be carried into such building and the building is conspicuously posted in accordance with K.S.A. 2016 Supp. 75-7c10.”); *see also* State of Kan. Office of the Att’y Gen., Attorney General Opinion No. 2015-3 2-3 (Jan. 28, 2015), <http://ksag.washburnlaw.edu/opinions/2015/2015-003.pdf> (“Prior to July 1, 2013, concealed carry could be prohibited inside . . . public building[s],” but after the 2014 amendments, state and municipal buildings cannot prohibit firearms with the exception of public colleges and universities who still may ban guns so long as signs are conspicuously posted.).

21. MISS. CODE ANN. § 97-37-17(6)(c) (West 2011) (allowing anyone except for a current student or a student who has been suspended or expelled in the preceding five years to possess a firearm in their motor vehicle on educational property, including colleges and universities, so long as they do not “brandish, exhibit or display the firearm in any careless, angry or threatening manner”).

22. OR. REV. STAT. ANN. § 166.370(3)(j) (West 2015) (excepting from the crime of possessing a firearm on “school property . . . a person who is not otherwise prohibited from possessing [a] firearm; and is unloaded and locked in a motor vehicle”).

23. TENN. CODE ANN. § 39-17-1309(c)(1)(B) (West Supp. 2016) (allowing nonstudent adults to possess firearms in their private vehicles on school grounds). This is a departure from its previous policy completely banning firearms on postsecondary campuses. Lewis, *supra* note 14, at 6 n.39. Recently, Tennessee, legislation was proposed that permits all private institutions from K-12 to post-secondary institutions to permit the carrying of handguns on their campuses if they so desire. S.B. 1559, 109th Gen. Assemb., 1st Reg. Sess. (Tenn. 2016). Tennessee Senate Bill 2376, permitting full-time public postsecondary institutions’ employees with licenses to carry concealed firearms on campus so long as they notify the campus police they will be carrying, has passed both houses in the Tennessee legislature and the Tennessee Governor is expected to allow the bill to pass without his signature. Richard Locker, *Bill Haslam to Let Guns-On-Campus Bill Become Law*, KNOXVILLE NEWS SENTINEL (May 2, 2016), <http://www.knoxnews.com/news/politics/haslam-to-let-guns-on-campus-bill-to-become-law-31dedb25a4d9-7a3b-e053-0100007ff39a-377856041.html>.

24. TEX. GOV’T CODE ANN. § 411.2031(c) (West 2016) (expressly forbidding all Texas higher education institutions from “adopt[ing] any rule, regulation, or other provision prohibiting license holders from carrying handguns on the campus of the institution”). For a detailed discussion on this statute and its fatal flaws, see generally Shaundra K. Lewis & Daniel

most limit the discretion of higher education institutions to decide whether to ban guns inside academic buildings. Those jurisdictions include Colorado, Idaho, Tennessee, Texas, and Wisconsin, increasing the total number of jurisdictions with compulsory campus carry laws from one in 2011 to six in 2016.

There are only 17 U.S. jurisdictions that expressly ban firearms on college and university campuses, which is down from the 29 jurisdictions prohibiting guns pre-2011.²⁶ These jurisdictions include California,²⁷ Florida,²⁸ Georgia,²⁹ Illinois,³⁰ Louisiana,³¹ Massachusetts,³² Michigan,³³

De Luna, *Symposium on "Texas Gun Law and the Future": The Fatal Flaws in Texas's Campus Carry Law*, 41 T. MARSHALL L. REV. 135 (2016).

25. WIS. STAT. § 941.23(2)(d) (2016) (excepting licensees from the crime of Carrying a Concealed Weapon); *Id.* § 175.60(16) (not listing a postsecondary institution or school as a place where CHLs are prohibited from carrying); see also *Guns on Campus: Overview*, NAT'L CONF. ST. LEGISLATURES (Jan. 24, 2017), <http://www.ncsl.org/research/education/guns-on-campus-overview.aspx> (listing Wisconsin as one of the States where CHLs may carry firearms on campus).

26. See *Guns on Campus: Overview*, *supra* note 25 ("Currently, there are 17 states that ban carrying a concealed weapon on a college campus . . .").

27. CAL. PENAL CODE § 626.9(h) (West 2016) (making it unlawful to carry or possess a loaded firearm "upon the grounds of a campus of, or buildings owned or operated for student housing, teaching, research, or administration by, a public or private university or college, that are contiguous or are clearly marked university property, unless it is with the written permission of the university or college president, his or her designee, or equivalent university or college authority").

28. FLA. STAT. ANN. § 790.06(12)(a)(13) (West 2014) (expressly proscribing the carrying of a firearm at colleges and universities unless it is a stun gun).

29. GA. CODE ANN. § 16-11-127.1 (West 2016) (making it a crime to possess a firearm within a "school safety zone," which includes colleges, universities, or postsecondary institutions, unless authorized by an appropriate official). Recently, the Georgia Legislature proposed a bill that would allow campus carry on campus, but the Georgia governor vetoed this legislation. Phillips, *supra* note 2 (reporting all 29 of Georgia's public colleges and universities, and their police chiefs, oppose the proposed campus carry bill). It remains to be seen whether two-thirds of the legislature will override the veto.

30. 430 ILL. COMP. STAT. § 66/65(a)(15) (West Supp. 2016) (explicitly prohibiting the carrying of a firearm into any public or private college's or university's "building, classroom, laboratory, medical clinic, hospital, artistic venue, athletic venue, entertainment venue, officially recognized university-related organization property, whether owned or leased, and any real property, including parking areas, sidewalks, and common areas under the control of a public or private community college, college, or university"); see Caitlyn G. McEvoy, *The New Illinois Concealed Carry Law*, 101 ILL. B.J. 620, 620, 622-23 (2013) (noting that "[i]n a year's time, Illinois went from a complete ban on public carrying of firearms to a concealed carry law," but still carved out schools as a sensitive place where concealed firearms are still prohibited).

31. LA. STAT. ANN. § 14:95(A)(5)(a) (West Supp. 2016) (banning firearms on "school campus" and including secondary schools in the definition of "school").

32. MASS. GEN. LAWS ch. 269 § 10(j) (2014) (forbidding the carrying of a firearm on a college or university campus without prior authorization).

33. MICH. COMP. LAWS ANN. § 28.4250(1)(h) (West 2015) (prohibiting the carrying of a concealed firearm in a college or university classroom or dormitory).

Missouri,³⁴ Nebraska,³⁵ Nevada,³⁶ New Jersey,³⁷ New Mexico,³⁸ New York,³⁹ North Carolina,⁴⁰ North Dakota,⁴¹ South Carolina,⁴² and Wyoming.⁴³

There are 24 U.S. jurisdictions that either have no statute addressing the carrying of firearms on college and university campuses or expressly leave it up to the institutions themselves to decide.⁴⁴ These discretionary jurisdictions include: Alabama, Alaska, Arizona, Arkansas, Connecticut, Delaware, Hawaii, Indiana, Iowa, Kentucky, Maine, Maryland, Minnesota, Montana, New Hampshire, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Vermont, Virginia, Washington, and West Virginia.⁴⁵ Significantly, to date, all of the colleges and universities within these discretionary jurisdictions have

34. MO. REV. STAT. § 571.107.1(10) (2014) (providing no CHL holder may carry a concealed firearm at a higher education institution without the governing body of that institution's consent).

35. NEB. REV. STAT. § 28-1204.04(1) (2014) (declaring "[a]ny person who possesses a firearm in a school, on school grounds, in a school-owned vehicle, or at a school-sponsored activity or athletic event is guilty of the offense of unlawful possession of a firearm at a school," and indicating later in an exception to this rule that "school" encompasses postsecondary institutions).

36. NEV. REV. STAT. ANN. § 202.265(1)(c) (West 2015) (stating no person shall possess or carry a firearm on the property of the Nevada System of Higher Education).

37. N.J. STAT. ANN. § 2C:39-5(e)(1) (West 2016 & Supp. 2016) (making it a criminal act to possess a firearm at a college or university).

38. N.M. STAT. ANN. § 30-7-2.4(A) (West 2016) (banning firearms generally at postsecondary institutions and enumerating specific exceptions).

39. N.Y. PENAL LAW § 265.01 (2016) ("A person is guilty of criminal possession of a weapon in the fourth degree when: (1) He or she possesses any firearm . . .").

40. N.C. GEN. STAT. § 14-269.2(a)-(b) (West 2015) (proscribing firearms on educational property, including that of community colleges, four-year colleges and universities).

41. N.D. CENT. CODE § 62.1-02-13(1) (2015) (precluding a public or private employer, including a college and university, from prohibiting a person from possessing a locked firearm in their private vehicle). Note that, in 2015, North Dakota amended this law to exclude colleges and universities from the enumerated exceptions to this rule. H.B. 1450, 64th Leg. Assemb. (N.D. 2015).

42. S.C. CODE ANN. § 16-23-420(A) (West 2016) ("It is unlawful for a person to possess a firearm of any kind on any premises or property owned, operated, or controlled by a private or public school, college, university, technical college, other post-secondary institution, or in any publicly owned building, without the express permission of the authorities in charge of the premises or property.").

43. WYO. STAT. ANN. § 6-8-104(t),(x) (West 2015) ("No person authorized to carry a concealed weapon . . . shall carry a concealed firearm into . . . [a]ny college or university facility without the written consent of the security service of the college or university.").

44. See *supra* notes 14-43 and accompanying text; see also *Guns on Campus' Laws for Public Colleges and Universities*, ARMED CAMPUSES, <http://www.armedcampuses.org> (last visited May 9, 2017) (mapping the U.S. jurisdictions where guns are prohibited, permitted, and required on postsecondary campuses); *Guns on Campus: Overview*, *supra* note 25 (recognizing that there are 24 state jurisdictions that leave it up to each individual college and university whether to permit guns on their campuses); Phillips, *supra* note 2 (noting that, in 2016, the National Conference of State Legislatures reported that 23 states allowed individual colleges and universities to decide whether or not to ban concealed weapons on campus).

45. *Guns on Campus: Overview*, *supra* note 25; KSE Focus, *States Consider "Campus Carry" Legislation in Wake of Oregon Shooting*, CQ ROLL CALL (Oct. 13, 2015), <http://cqrollcall.com/statetrackers/list-of-states-considering-campus-carry-gun-legislation>.

elected to remain gun-free; thus, “[t]he overwhelming majority of the 4,400” U.S. colleges and universities prohibit firearms.⁴⁶

Other jurisdictions are currently considering (or have recently passed) new legislation that will allow the concealed carry of firearms on campus.⁴⁷ For instance, Florida is examining removing colleges and universities from the list of prohibited places where concealed firearms are not allowed.⁴⁸ Currently, in Florida, students, employees, and faculty are permitted to carry only stun guns on campus.⁴⁹ Accordingly, there appears to be momentum for state legislatures to limit higher education institutions’ discretion on whether or not to permit guns on campus, raising several First Amendment concerns.

III. FIRST AMENDMENT CONCERNS ABOUT LEGISLATION

Opponents of compulsory campus carry laws could argue that state legislation that compels concealed carry of firearms on campus offends the post-secondary institutions’, the faculties’, and the students’ First Amendment rights to academic freedom and free speech because the very presence of firearms is likely to suppress freedom of thought and expression. As is explained more fully in this Part, firearms—instruments of violence—have a chilling effect on free speech and negatively impact the academic environment. Because colleges and universities have wide latitude to set their curriculum and determine how it shall be taught, individual institutions should be allowed discretion to decide whether or not to have an armed campus. Granting such discretion is consistent with the Supreme Court’s historical protection of academic freedom.⁵⁰

A. HOW GUNS VIOLATE ACADEMIC FREEDOM

Although the constitutional right to academic freedom is not expressly stated in the First Amendment to the U.S. Constitution, the Supreme Court has recognized it as a right that naturally emanates from free speech.⁵¹ Courts

46. *Guns on Campus’ Laws for Public Colleges and Universities*, *supra* note 44.

47. For example, Tennessee recently passed a bill in 2016 permitting faculty to carry concealed firearms on campus, provided they notify local law enforcement. *Guns on Campus: Overview*, *supra* note 25. In 2016, the Georgia legislature passed a bill to allow concealed carry on college campuses but that bill was ultimately vetoed by the governor of Georgia. *Id.* Finally, in 2016, Kansas passed a bill that removed the firearm ban on college campuses and leaves it to each individual institution’s discretion to permit firearms or not. *Id.*

48. H.B. 4001, 2016 Leg., Reg. Sess. (Fla. 2016).

49. FLA. STAT. ANN. § 790.06(12)(a)(13) (West Supp. 2017).

50. *See, e.g.*, *Bd. of Regents of the Univ. of Wis. Sys. v. Southworth*, 529 U.S. 217, 237 (2000) (Souter, J., concurring) (“Our understanding of academic freedom has included not merely liberty from restraints on thought, expression, and association in the academy, but also the idea that universities and schools should have the freedom to make decisions about how and what to teach.”).

51. *See, e.g.*, *Keyishian v. Bd. of Regents of the Univ. of the State of N.Y.*, 385 U.S. 589, 603 (1967) (“Our Nation is deeply committed to safeguarding academic freedom, which is of transcendent value to all of us and not merely to the teachers concerned. That freedom is therefore a special concern of the First Amendment, which does not tolerate laws that cast a pall

and scholars have recognized two types of constitutional academic freedoms: (1) those belonging to the college or university; and (2) those belonging to individual professors and students.⁵²

1. Institutional Academic Freedom

Institutional academic freedom can best be described as an “institution’s autonomous decision-making ability.”⁵³ In other words, academic freedom protects higher education institutions from political interference in its academic-policy decisions.⁵⁴ While state government has general power to pass legislation that impacts how a college or university operates,⁵⁵ in some circumstances legislation goes too far. For instance, the Supreme Court has repeatedly protected colleges’ and universities’ ability to set student admission criteria.⁵⁶ The Court has deferred to institutions’ decisions in the

of orthodoxy over the classroom.”); *Shelton v. Tucker*, 364 U.S. 479, 487 (1960) (“The vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools. . . . ‘But, in view of the nature of the teacher’s relation to the effective exercise of the rights which are safeguarded by the Bill of Rights and by the Fourteenth Amendment, inhibition of freedom of thought, and of action upon thought, in the case of teachers brings the safeguards of those amendments vividly into operation.’” (quoting *Wieman v. Updegraff*, 344 U.S. 183, 195 (1952) (Frankfurter, J., concurring))); *Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957) (plurality opinion) (“The essentiality of freedom in the community of American universities is almost self-evident. . . . To impose any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation.”). The First Amendment provides in pertinent part that “Congress shall make no law . . . abridging the freedom of speech.” U.S. CONST. amend. I. This prohibitory constitutional provision also prevents state legislatures from violating institutions’ and individuals’ academic freedom and freedom of speech rights, as the due process clause of the Fourteenth Amendment incorporates the First Amendment. *McDonald v. City of Chicago*, 561 U.S. 742, 764–65 n.12 (2010) (recognizing the due process clause of the Fourteenth Amendment has incorporated nearly all the provisions of the Bill of Rights, including the First Amendment right to free speech).

52. Because legal scholarship is divided over whether constitutional academic freedom belongs to the institution or the individual, this Article makes the case for both. Compare Richard Fossey & Joseph C. Beckham, *University Authority over Teaching Activities: Institutional Regulation May Override a Faculty Member’s Academic Freedom*, 228 W. EDUC. L. REP. 1, 1 (2008) (explaining that “academic freedom appears vested in institutional authority rather than faculty prerogative”), with Richard H. Hiers, *Institutional Academic Freedom—a Constitutional Misconception: Did Grutter v. Bollinger Perpetuate the Confusion?*, 30 J.C. & U.L. 531, 531–32 (2004) (making the case that academic freedom belongs to individual professors only). See also *Urofsky v. Gilmore*, 216 F.3d 401, 410 (4th Cir. 2000) (“[T]o the extent the Constitution recognizes any right of ‘academic freedom’ above and beyond the First Amendment rights to which every citizen is entitled, the right inheres in the University, not in individual professors . . .”).

53. Laura Houser Oblinger, Note, *The Wild, Wild West of Higher Education: Keeping the Campus Carry Decision in the University’s Holster*, 53 WASHBURN L.J. 87, 106 (2013).

54. *Id.* at 106–07.

55. *Id.* at 106.

56. See, e.g., *Fisher v. Univ. of Tex. at Austin*, 133 S. Ct. 2411, 2419 (2013) (“[T]he decision to pursue ‘the educational benefits that flow from student body diversity’ that the university deems integral to its mission is, in substantial measure, an academic measure to which some, but not complete, judicial deference is proper under *Grutter*.” (citations omitted)); *Grutter v. Bollinger*, 539 U.S. 306, 328 (2003) (holding a university’s “educational judgment that such

admissions context because the institutions are in the best position to identify “those students who will contribute the most to the ‘robust exchange of ideas,’” a goal that “is of paramount importance in the fulfillment of its mission.”⁵⁷ If a college or university receives deference as to whom to permit into the classroom, it stands to reason that it should also receive deference when it seeks to ban an item that has the potential to seriously undermine the “robust exchange of ideas.”⁵⁸ Therefore, deciding whether or not to permit concealed firearms in a classroom is the same type of academic-policy decision as the decision of whom to admit to study because it also affects the academic environment. Justice Frankfurter has stated “it is the business of a university to provide that atmosphere which is most conducive to speculation, experiment and creation,” and for the university to provide this atmosphere, the university must be able to determine for itself these “four essential freedoms”—“who may teach, what may be taught, how it shall be taught, and who may be admitted to study.”⁵⁹

The U.S. Supreme Court’s jurisprudence recognizing an institution’s constitutional academic freedom is well-documented. For example, it has unequivocally stated that academic freedom is “a special concern of the First Amendment.”⁶⁰ It also has noted that “[t]he vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools,”⁶¹ “[t]he classroom is peculiarly the ‘marketplace of ideas,’”⁶² and “[t]he Nation’s future depends upon leaders trained through wide exposure to that robust exchange of ideas which discovers truth ‘out of a multitude of tongues, [rather] than through any kind of authoritative selection.’”⁶³ The Supreme Court has further observed that it has a “tradition of giving a degree of deference to a university’s academic decisions.”⁶⁴ In sum, the Supreme Court has made clear that academic freedom has “a constitutional dimension, grounded in the First Amendment, of educational autonomy,” and colleges and “universities occupy a special niche in our constitutional tradition.”⁶⁵

As mentioned earlier, this constitutionally rooted academic freedom permits colleges and universities to decide “who may teach, what may be

diversity is essential to its educational mission is one to which we defer”); *Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265, 312 (1978) (“The [academic] freedom of a university to make its own judgments as to education includes the selection of its student body.”).

57. *Bakke*, 438 U.S. at 313.

58. *Id.*

59. *Sweezy v. New Hampshire*, 354 U.S. 234, 263 (1957) (Frankfurter, J., concurring).

60. *Keyishian v. Bd. of Regents of the Univ. of the State of N.Y.*, 385 U.S. 589, 603 (1967).

61. *Id.* (quoting *Shelton v. Tucker*, 364 U.S. 479, 487 (1960)).

62. *Id.*

63. *Id.* (alteration in original) (quoting *United States v. Associated Press*, 52 F. Supp. 362, 372 (1943)).

64. *Grutter v. Bollinger*, 539 U.S. 306, 328 (2003).

65. *Id.* at 329.

taught, *how it shall be taught*, and who may be admitted to study.”⁶⁶ Arguably, the essential academic freedom of deciding “how it shall be taught” encompasses the decision of how to best create an “atmosphere which is most conducive to speculation, experiment and creation.”⁶⁷ And one would think that an “atmosphere which is most conducive to speculation, experiment and creation” is one in which faculty and students feel safe to exchange ideas.⁶⁸ Accordingly, whether to permit guns in classrooms is the type of educational decision that should be left to the universities.

Having explained why the essential academic freedom of “how it shall be taught” includes the academic decision of how to best keep colleges’ and universities’ campuses safe, the next question becomes whether the content-neutral campus carry law *compelling* colleges and universities to permit concealed handgun licensees to carry firearms on campus, including in classrooms, violates institutions’ First Amendment right to academic freedom. Historically, the Supreme Court has reviewed content-neutral statutes that incidentally burden free speech or academic freedom under a level of intermediate scrutiny.⁶⁹ Generally, statutes are “content neutral” if the laws “confer benefits or impose burdens on speech without reference to the ideas or views expressed.”⁷⁰ Legislation is content-based if either (1) on its face it “distinguish[es] favored speech from disfavored speech on the basis of the ideas or views expressed” or (2) the law cannot be justified without reference to the regulated speech or was adopted because of disagreement with a message the speech conveys.⁷¹ Because campus carry legislation does not fall into either one of these content-based categories, a court is most likely to find that it is content-neutral and intermediate scrutiny applies.⁷²

To survive intermediate scrutiny, (1) the law must further an important or substantial government interest; (2) the government interest must be

66. *Sweezy v. New Hampshire*, 354 U.S. 234, 263 (1957) (Frankfurter, J., concurring) (emphasis added).

67. *Id.*

68. *Id.*; see also Judith Arean, *Government as Educator: A New Understanding of First Amendment Protection of Academic Freedom and Governance*, 97 GEO. L.J. 945, 981 (observing that Supreme Court jurisprudence has “repeatedly extended academic freedom beyond research and teaching to cover the kinds of academic matters embodied in the four essential freedoms”).

69. *Turner Broad. Sys., Inc. v. FCC*, 512 U.S. 622, 642 (1994); *Emergency Coal. to Defend Educ. Travel v. U.S. Dep’t of Treasury*, 545 F.3d 4, 12 (2008).

70. *Turner Broad. Sys., Inc.*, 512 U.S. at 643; *Emergency Coal. to Defend Educ. Travel*, 545 F.3d at 12.

71. *Turner Broad. Sys., Inc.*, 512 U.S. at 643; *Reed v. Gilbert*, 135 S. Ct. 2218, 2227 (2015).

72. Note that, in an earlier Article, I argued that strict scrutiny should apply to constitutional academic freedom challenges to mandatory campus carry laws based, in part, on some dicta from *Sweezy v. New Hampshire*, 354 U.S. 234, 262 (1957), where the Supreme Court indicated that “exigent and obviously compelling” reasons must exist for political power to intrude upon academic freedom. Lewis, *supra* note 14, at 17–19, 19 n.154. This Article explains why the law will not survive strict scrutiny review because it is not narrowly tailored to its governmental interest of keeping public higher educational institutions safe. *Id.* at 19–27.

unrelated to the suppression of free expression; and (3) “the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest.”⁷³ Regarding the first element, state governments have an important and substantial government interest in keeping public higher education institutions safe from violence, including mass shootings. As to the second element, this governmental interest is unrelated to the suppression of free speech in that there is no evidence that in enacting compulsory campus carry laws, states are attempting to suppress any type of speech. However, an argument can be made that the restriction on academic freedom is greater than is essential to further the government’s safety interest, and thus, the third prong of the test cannot be satisfied. Regarding this third prong, courts will consider whether the law is narrowly tailored, or stated differently, whether it “do[es] not burden substantially more speech than is necessary to further the government’s legitimate interest.”⁷⁴ Moreover, “when trenching on first amendment interests, even incidentally, the government must be able to adduce either empirical support or at least sound reasoning on behalf of its measures.”⁷⁵

There is no empirical research that permitting concealed handgun licensees to carry firearms on college campuses makes the campuses safer from a rampage shooting. Granted, this could be because, until recently, most college campuses banned firearms. However, a recent FBI study on mass shootings that occurred at various public places from 2000 to 2013, is instructive on whether having armed individuals on campuses could prevent or reduce the incidences of rampage shootings.⁷⁶ In this FBI study, the FBI observed that out of 160 mass shooting incidents, armed non-law-enforcement individuals were only able to stop the shootings on five occasions or in three percent of the cases.⁷⁷ In these five cases, four armed civilians were security guards and only one person was an average citizen.⁷⁸ However, unarmed civilians were able to successfully stop an active mass shooter in 13% of the cases.⁷⁹ This statistical evidence suggests that need for CHL holders to carry firearms on campus is greater than is essential to foster a state’s interest in keeping public colleges and universities safe.

Additionally, the campus carry measure is not based upon sound reasoning. The idea that a student with a handgun can stop an individual armed with a military-style assault rifle—the weapon of choice by most mass

73. *Emergency Coal. to Defend Educ. Travel*, 545 F.3d at 12.

74. *Turner Broad. Sys., Inc.*, 512 U.S. at 662.

75. *See Century Commc’ns Corp. v. FCC*, 835 F.2d 292, 304 (D.C. Cir. 1987).

76. U.S. DEP’T OF JUSTICE, FED. BUREAU OF INVESTIGATION, A STUDY OF ACTIVE SHOOTER INCIDENTS IN THE UNITED STATES BETWEEN 2000 AND 2013, at 11–12 (2013), <https://www.fbi.gov/file-repository/active-shooter-study-2000-2013-1.pdf/view>.

77. *Id.* at 11.

78. *Id.*

79. *Id.*

shooters—is unfounded.⁸⁰ Indeed, during the 2015 mass shooting in a classroom at Umpqua Community College in Oregon, there were several students on campus who were Air Force veterans (one of whom admitted to having a firearm that day), but they chose not to intervene because, according to one of the students, it “could have opened us up to being potential targets ourselves.”⁸¹ Because the campus carry measure is not based upon sound empirical research or reasoning, the restriction on public higher education institutions’ academic freedom to prohibit firearms to foster an environment more conducive to learning is greater than essential to further state governments’ safety interests. Accordingly, it appears that an institution can challenge a campus carry law on the ground of constitutional academic freedom.

2. Individual Academic Freedom

Arguably, individual professors and students also have a constitutional right to academic freedom.⁸² Individual First Amendment academic freedom refers to “students’ and teachers’ freedom to engage in an ‘independent and uninhibited exchange of ideas.’”⁸³ As explained in the next two Subparts, both professors and students who believe the presence of hidden firearms will suppress or chill their speech can challenge campus carry laws on this ground.

i. Faculty’s Right to Academic Freedom

The presence of firearms in the classroom interferes with a professor’s freedom in teaching. Specifically, it infringes upon a professor’s academic

80. See Jim Spiewak, *The Difference Between an AR-15 Rifle and a 9mm Handgun*, FOX13 (June 14, 2016, 6:11 PM), <http://www.fox13memphis.com/news/the-difference-between-an-ar-15-rifle-and-a-9mm-handgun/343329968> (explaining in more detail why a handgun is no match for a military assault rifle such as an AR-15 and why arming average citizens on campus with firearms will not make campuses safer, as some studies indicate that the presence of more firearms actually leads to more violence and deaths).

81. Matt Valentine, *The Myth of the Good Guy with the Gun*, POLITICO MAG. (Oct. 5, 2015), <http://www.politico.com/magazine/story/2015/10/oregon-shooting-gun-laws-213222>.

82. Robert J. Tepper & Craig G. White, *Speak No Evil: Academic Freedom and the Application of Garcetti v. Ceballos to Public University Faculty*, 59 CATH. U. L. REV. 125, 127 (2009) (acknowledging students have an academic right in learning); Perry A. Zirkel, *Academic Freedom of Individual Faculty Members*, 47 W. EDUC. L. REP. 809, 816 (1988) (recognizing that individual faculty members at public colleges enjoy the right to constitutional academic freedom); Oblinger, Note, *supra* note 53, at 105 (“Academic freedom allows students and professors to freely engage in discussion without fear of censorship.”).

83. Oblinger, Note, *supra* note 53, at 105–06 (quoting Walter P. Metzger, *Profession and Constitution: Two Definitions of Academic Freedom in America*, 66 TEX. L. REV. 1265, 1312 (1988)); see also Tepper & White, *supra* note 82, at 127 (“Universities exist for the common good, which ‘depends upon the free search for truth and its free exposition.’ As a necessity to that search, academic freedom exists not only to protect the rights of faculty in teaching, but also the rights of students in learning.” (quoting AM. ASS’N OF UNIV. PROFESSORS ET AL., 1940 STATEMENT OF PRINCIPLES ON ACADEMIC FREEDOM AND TENURE 14 (2006) <https://www.aaup.org/NR/rdonlyres/EBB1B330-33D3-4A51-B534-CEE0C7A90DAB/0/1940StatementofPrinciplesonAcademicFreedomandTenure.pdf>)).

freedom to decide “what to teach.” Colleges and universities are a hotbed of social and political controversy where tensions often run high.⁸⁴ Knowing that students may be carrying concealed firearms may cause professors to avoid discussing provocative, delicate or political issues. For example, in response to the passage of Texas’s campus carry law, the University of Houston’s faculty senate advised its professors to drop sensitive or controversial topics from their curriculum, “not ‘go there’” if they perceive students are getting angry, limit their accessibility to students by adopting an appointment-only-office-hours policy, and only meet their students in controlled circumstances.⁸⁵

As a further testament to the fact that some university professors believe campus carry laws negatively affects what they can teach, in July of 2016, three University of Texas professors filed a lawsuit seeking to prevent Texas’s compulsory campus carry law from going into effect on August 1, 2016, arguing in part, that because their courses cover “volatile topics as abortion” and gay rights, and their pedagogical styles try to generate heated debates, their safety is put at risk by the hidden presence of firearms.⁸⁶ They contended that permitting students to carry concealed firearms into their classrooms “chills their First Amendment rights to academic freedom.”⁸⁷ Although the district court denied these professors’ motion for a preliminary injunction,⁸⁸ the court’s decision does not foreclose a professor from challenging a compulsory campus carry law in the future for several reasons.

First, the trial court had no choice but to rule against the professors because of the procedural posture of the case. The University of Texas professors were seeking a preliminary injunction to stop the Texas Campus

84. See, e.g., Khwaja Ahmed, *Stop Bill Maher from Speaking at UC Berkeley’s December Graduation*, CHANGE.ORG, <https://www.change.org/p/university-of-california-berkeley-stop-bill-maher-from-speaking-at-uc-berkeley-s-december-graduation> (last visited May 10, 2017); Kristina Sguelgia, *Condoleezza Rice Declines to Speak at Rutgers After Student Protests*, CNN (May 5, 2014, 2:01 AM), <http://www.cnn.com/2014/05/04/us/condoleezza-rice-rutgers-protests> (describing how over 50 student protestors sat outside the Rutgers University’s President’s office to protest Condoleezza Rice’s invitation by the University to speak at commencement and receive an honorary degree because she authorized torture of detainees during President George W. Bush’s administration and noting how the police had to be called because of a shattered glass door).

85. Tom Dart, *Texas Academics Told to Avoid ‘Sensitive Topics’ if Gun Law Goes into Effect*, GUARDIAN (Feb. 24, 2016, 1:10 PM), <http://www.theguardian.com/us-news/2016/feb/24/university-of-houston-faculty-campus-carry-law-texas-guns>.

86. Complaint at *5–6, *Glass v. Paxton*, No. 1:16-cv-845, 2016 WL 3625574 (W.D. Tex. July 6, 2016).

87. *Id.* at *5.

88. *Glass v. Paxton*, No. 1:16-cv-845, slip op. at *7–8 (W.D. Tex. Aug. 22, 2016) (“The court has searched the jurisprudence of this country from the ratification of the Constitution forward and has found no precedent for Plaintiffs’ proposition that there is a right of academic freedom so broad that it allows them such autonomous control of their classrooms—both physically and academically—that their concerns override decisions of the legislature and the governing body of the institution that employs them.”); see also Edgar Walters, *Judge Denies UT-Austin Professors’ Attempt to Block Campus Carry*, TEX. TRIB. (Aug. 22, 2016, 5:19 PM), <https://www.texastribune.org/2016/08/22/judge-denies-professors-attempt-block-campus-carry>.

Carry Law from being implemented approximately a month before it was supposed to take effect. As the trial court pointed out in its order, a preliminary injunction is an “extraordinary remedy” or drastic measure that can only be granted if, among other things, the movant shows there is “a substantial likelihood of success.”⁸⁹ It was impossible for the movants (the professors) in this case to show that there was a likelihood of success when the campus carry issue was an issue of first impression. Texas’s Campus Carry law had just passed and had not even taken effect yet, mandatory campus carry laws in general are a relatively new phenomena, and the U.S. Supreme Court has not clearly defined the contours of academic freedom in general, let alone in the context of campus carry laws.⁹⁰ Additionally, important questions concerning academic freedom that are pertinent to this case have not been squarely answered by the Supreme Court. For instance, is constitutional academic freedom a right that belongs to (1) academic institutions; (2) professors; (3) students; or (4) all of the above as this Article posits?⁹¹ Does the Supreme Court’s opinion in *Garcetti v. Ceballos*, holding that public employees’ speech made pursuant to their official duties is not protected First Amendment speech, apply to professors at public colleges and universities?⁹² Can a content-neutral law, such as campus carry, that chills speech violate the First Amendment? With these questions remaining, it is no wonder the professors could not establish the likelihood of success at the preliminary injunction phase of the litigation process.

Second, showing the likelihood of success is not synonymous with obtaining actual success.⁹³ The district court itself made this clear when it expressly stated that its ruling was limited to the plaintiffs’ request for *immediate relief* and that it was making “no final ruling on any asserted issue.”⁹⁴ Even if the trial court’s final decision is that faculty have no constitutional academic freedom right that overrides the legislature’s decision to permit CHLs to carry firearms in classrooms, this is the opinion of a single judge—an opinion that can be reversed by a higher court.

89. Glass, slip op. at *4.

90. Areen, *supra* note 68, at 946–48 (“[T]he [Supreme] Court ‘has not developed a coherent theory to guide constitutional protection of academic freedom’ and there is a ‘[d]ebate over whether academic freedom is an individual or an institutional right.’”).

91. Bridget R. Nugent & Julee T. Flood, *Rescuing Academic Freedom From Garcetti v. Ceballos: An Evaluation of Current Case Law and a Proposal for the Protection of Core Academic, Administrative, and Advisory Speech*, 40 J.C. & U.L. 115, 116 (2014) (“Academic freedom is a conceptual chameleon. Sometimes it is thought to be about institutions; sometimes about individuals.” (citations omitted)).

92. *Garcetti v. Ceballos*, 547 U.S. 410, 421 (2006).

93. *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 394–95 (5th Cir. 1981) (highlighting that it is improper to “equate[] ‘likelihood of success’ with ‘success’” and “the findings of fact and conclusions of law made by a court granting a preliminary injunction are not binding at trial on the merits”).

94. Glass, slip op. at *7–8.

Having established that the question of whether individual faculty can challenge compulsory campus carry laws on constitutional grounds remains an open question, the next issue is whether *Garcetti* prevents individual professors from raising a First Amendment claim in the campus carry context. In *Garcetti*, a deputy district attorney claimed that his First and Fourteenth Amendment rights were violated when he suffered adverse retaliatory employment actions after sending a memorandum to his supervisors pointing out serious misrepresentations in a search warrant affidavit.⁹⁵ The deputy district attorney argued that his allegations of wrongdoing against the County's Sheriff's Office constituted protected First Amendment speech.⁹⁶ The Supreme Court held that the deputy district attorney's speech was not protected by the First Amendment because his expressions were made pursuant to his official duties as a calendar deputy, and "when public employees make statements pursuant to their official duties, the employees are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline."⁹⁷

In reaching this decision, the *Garcetti* Supreme Court relied heavily upon *Pickering v. Board of Education*, where it held that a teacher's First and Fourteenth Amendment rights were violated when he was dismissed for sending a letter to a local newspaper criticizing a recently proposed tax increase as well as the School Board and district superintendent of the school.⁹⁸ In *Pickering*, the Supreme Court set forth a two-part test that must be applied when determining whether a public employee's speech is protected by the First Amendment: (1) "whether the employee spoke as a citizen on a matter of public concern"; and (2) "whether the relevant government entity had an adequate justification for treating the employee differently from any other member of the public."⁹⁹ In *Garcetti*, the Court recognized that citizens who work for the government are still entitled to free speech protections, but their First Amendment rights are limited if their speech occurs within the scope of their employment.¹⁰⁰ The Court distinguished *Pickering* by pointing out that the letter the teacher sent to the newspaper in *Pickering* was similar to letters sent by citizens who do not work for the government and had "no official significance."¹⁰¹ However, the deputy district attorney did not write the memo in question as a private citizen but within the scope of his employment duties.

95. *Garcetti*, 547 U.S. at 413-15.

96. *Id.* at 415.

97. *Id.* at 421.

98. *See generally* *Pickering v. Bd. Of Educ.*, 391 U.S. 563 (1968).

99. *Garcetti v. Ceballos*, 547 U.S. 410, 418 (2006).

100. *Id.* at 419.

101. *Id.* at 422.

Most significantly, the *Garcetti* Supreme Court did not address whether its analysis would apply to a university professor alleging a violation of his or her academic freedom. Indeed, the Supreme Court acknowledged that “[t]here is some argument that expression related to academic scholarship or classroom instruction implicates additional constitutional interests that are not fully accounted for by this Court’s customary employee-speech jurisprudence.”¹⁰² Accordingly, the Supreme Court intentionally left open the question of whether the *Garcetti* analysis would apply in a case involving teaching or scholarship. The Court probably left this question open because public higher education institutions are a unique government employer and occupy “a special niche” in First Amendment doctrine.¹⁰³ When a professor is teaching in a classroom, academic freedom protects his or her scholarly evaluation of matters of public concern; such protection is absent from the job of, for instance, an assistant district attorney.¹⁰⁴ Following *Garcetti*, a circuit split has developed over whether professors’ speech should be assessed under *Garcetti*’s scope of employment analysis,¹⁰⁵ or whether a professor’s speech is governed by *Pickering*.¹⁰⁶

But even for the circuits that apply *Pickering* to faculty speech, finding that a public employee is speaking as a citizen on a matter of public concern does not end the analysis.¹⁰⁷ Rather, it must also be determined whether the professor-employee’s interests of speaking as a citizen outweighs the employer’s interest in promoting the efficiency of the public services it performs through its employees.¹⁰⁸ One can see how this framework, which was designed to address an adverse employment action against a public employee for their speech, does not exactly work in a university context where

102. *Id.* at 425.

103. *Grutter v. Bollinger*, 539 U.S. 306, 329 (2003).

104. *Nugent & Flood*, *supra* note 91, at 118 (“Uncensored speech by university professors facilitates an uninhibited pursuit of truth and the advancement of knowledge, encouraging . . . instruction by enabling scholars to speak candidly about potentially unwelcome or unsettling concepts.”).

105. *See Evans-Marshall v. Bd. of Educ. of Tipp City Exempted Vill. Sch. Dist.*, 624 F.3d 332, 344 (6th Cir. 2010); *Gorum v. Sessoms*, 561 F.3d 179, 185 (3d Cir. 2009); *Renken v. Gregory*, 541 F.3d 769, 774 (7th Cir. 2008).

106. *See Demers v. Austin*, 746 F.3d 402, 406 (9th Cir. 2014); *Adams v. Trustees of the Univ. of N.C.-Wilmington*, 640 F.3d 550, 562 (4th Cir. 2011).

107. *Jackson v. Tex. S. Univ.*, 997 F. Supp. 2d 613, 626 (S.D. Tex. 2014).

108. *Id.* The *Pickering* balancing test requires the consideration of a number of factors including:

- (1) the degree to which the employee’s activity involved a matter of public concern;
- (2) the time, place, and manner of the employee’s activity;
- (3) whether close working relationships are essential to fulfilling the employee’s public responsibilities and potential effect of the employee’s activity on those relationships;
- (4) whether the employee’s activity may be characterized as hostile, abusive, or insubordinate;
- [and] (5) whether the activity impairs discipline by superiors or harmony among coworkers.

Brady v. Fort Bend Cty., 145 F.3d 691, 708 (5th Cir. 1998).

a professor is arguing that a law has infringed his or her right to free speech. Moreover, the university-employer's business is to educate, and a professor must be free to speak as a citizen to effectively carry out the university's educational mission. Thus, *Garcetti* should not foreclose the possibility of a professor working at a public higher education institution from arguing a mandatory campus carry law violates his or her academic freedom of what to teach.

The argument can be made that firearms also elide a professor's speech in other ways aside from teaching in the classroom. Specifically, it discourages professors from criticizing and challenging students, such as confronting a student about cheating or giving students failing grades, as this could lead to an armed confrontation.¹⁰⁹ It also disincentivizes faculty members from questioning the administration and fully participating in shared governance of the university out of fear that heated issues could turn deadly.¹¹⁰ Knowing that faculty members may be carrying concealed firearms may also give administrators pause before disciplining a faculty or staff member for misconduct out of fear that person may retaliate with a gun. Therefore, university professors can argue that the presence of firearms violates their constitutional right to academic freedom in these contexts as well.

ii. *Students' Right to Academic Freedom*

Students who are uncomfortable with being in the presence of firearms in their classrooms may also contend their constitutional academic freedom right to learn is violated by a law compelling the allowance of guns.¹¹¹ The presence of guns inhibits students from freely exchanging ideas with each other.¹¹² One of the most educational aspects of higher education is the

109. See, e.g., Hickey de Haven, *supra* note 8, at 527–35 (describing how a law student shot his professor and Dean after flunking out of law school and getting into an “acrimonious shouting match” with his professor about his grades); see also Lewis, *supra* note 14, at 14; *Texas Preps Bill for Guns on College Campuses*, FOX NEWS U.S. (Feb. 22, 2011), <http://www.foxnews.com/us/2011/02/22/texas-preps-guns-college-campuses> (where a University of Houston professor commented, “people are struggling for grades in a recession environment. I’ve personally nearly come to blows with a student over an *A minus*, and I’m not really sure a gun would add anything to that mix, except perhaps incline me to change that person’s grade.” (emphasis added)).

110. Lewis, *supra* note 14, at 13.

111. It is well established that “First Amendment rights, applied in light of the special characteristics of the school environment, are available to . . . students. It can hardly be argued that . . . students . . . shed their constitutional rights to freedom of speech or expression at the schoolhouse gate.” *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969).

112. Wilson, *supra* note 11 (A prospective law student explained that most people in law school are 21 years or older and are eligible to carry a concealed firearm. He noted that “most of [his] classmates could potentially be carrying lethal weapons would increase [his] fear of speaking freely.”); see also Oblinger, *supra* note 53, at 109 (“If even one person in each classroom felt uncomfortable by the presence of guns, that one person is prevented from freely and comfortably participating in classroom and campus debates, thereby contravening the purpose of higher education.”).

bringing together of people of different ethnic, socio-economic, and political backgrounds to discuss important issues.¹¹³ Knowing that their classmates may be carrying pistols may dissuade some students from voicing diverse or unpopular intellectual, political, or social ideas out of fear that they may be shot by someone with strongly held opposing views in the heat of an argument. And who would desire to attend a college or university where they cannot speak freely? At least one college-bound student feels this way, as she decided to decline an admissions offer from a top-tier university, the University of Texas,¹¹⁴ due to Texas's impending compulsory campus carry law.¹¹⁵ Additionally, a study conducted by Ball State University found that 78% of students from 15 Midwestern colleges and universities would feel unsafe if students, faculty and visitors carried concealed firearms on campus.¹¹⁶ This empirical research demonstrates that the majority of students are uncomfortable with firearms being inside academic buildings, including classrooms. If they are uncomfortable, they cannot learn in violation of their constitutional academic freedom.

Moreover, students often participate in political speech on campus. Political speech is highly valued, as it “is central to the meaning and purpose of the First Amendment.”¹¹⁷ This is because “[t]he right of citizens to inquire, to hear, to speak, and to use information to reach consensus is a precondition to enlightened self-government and a necessary means to protect it.”¹¹⁸ Accordingly, the Supreme Court has made abundantly clear that “political speech must prevail against laws that would suppress it, whether by design or inadvertence.”¹¹⁹ Firearms may discourage students from expressing unpopular political perspectives. Because “[o]ur nation is deeply committed to safeguarding academic freedom”—a freedom that is “a special concern of

113. *Fisher v. Univ. of Tex. at Austin*, 133 S. Ct. 2411, 2417 (2013) (reiterating Justice Powell's determination in *Regents of the University of California v. Bakke*, 438 U.S. 265, 307–09 (1978), that the benefits stemming from diversity in education is a compelling state interest for using race as one of many factors in admitting students into college, although it is unconstitutional to make race the sole or determining factor in admitting an applicant); *id.* at 2433 (Ginsburg, J., dissenting) (citing *Gratz v. Bollinger*, 539 U.S. 244, 293 (2003) (Souter, J., dissenting)) (“Justice Powell's opinion in [*Bakke*] rules out a racial quota or set-aside, in which race is the sole fact of eligibility for certain places in a class.”).

114. *National Universities Rankings*, U.S. NEWS & WORLD REP., <http://colleges.usnews.rankingsandreviews.com/best-colleges/rankings/national-universities/data/page+4> (last visited May 3, 2017).

115. *Dart*, *supra* note 85 (reporting that a prospective University of Texas graduate student, Nora Dolliver, rejected an offer to attend the University of Texas in an email titled “Declining Offer of Admission Due to Campus Carry Guidelines”).

116. See Marc Ransford, *Study: Most College and University Presidents Don't Want Guns on Campus*, BALL ST. UNIV. (June 2, 2014), <http://cms.bsu.edu/news/articles/2014/6/study-most-college-and-university-presidents-dont-want-guns-on-campus>.

117. *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310, 329 (2010).

118. *Id.* at 339.

119. *Id.* at 340.

the First Amendment,” courts should “not tolerate laws that cast a pall of orthodoxy over the classroom,”¹²⁰ including campus carry laws forcing guns on campus.

As the U.S. Supreme Court eloquently stated in *Sweezy v. New Hampshire*,

The essentiality of freedom in the community of American universities is almost self-evident. No one should underestimate the vital role in a democracy that is played by those who guide and train our youth. To impose any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation. No field of education is so thoroughly comprehended by man that new discoveries cannot yet be made. Particularly is that true in the social sciences, where few, if any, principles are accepted as absolutes. Scholarship cannot flourish in an atmosphere of suspicion and distrust. Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die.¹²¹

Accordingly, this Article advocates for a court to find that firearms threaten higher education institutions’ and individual professors’ and students’ academic freedom.

In conclusion, legislatively forcing institutions to permit guns in classrooms when they feel that the presence of guns would stifle freedom of expression and not foster an atmosphere that encourages the robust exchange of ideas violates institutions’ academic freedom to decide “how to teach.” Mandating that professors teach in classrooms where students are carrying concealed deadly weapons infringes upon the professors’ academic freedom to decide “what to teach,” if those professors feel compelled to drop controversial topics from their class discussion or avoid discussions with students upset about low grades out of fear that those discussions could lead to heated and fatal debates. Requiring students who are afraid to freely express their viewpoints out of concern that someone who disagrees with their position may retaliate with a gun to be in a classroom with people with hidden firearms violates those students’ constitutional academic freedom. In sum, “[i]f even one person in each classroom fe[els] uncomfortable by the presence of guns, that one person is prevented from freely and comfortably participating in classroom and campus debates, thereby contravening the purpose of higher education,”¹²² which is constitutionally unacceptable.

120. *Keyishian v. Bd. of Regents of the Univ. of the State of N.Y.*, 385 U.S. 589, 603 (1967).

121. *Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957).

122. *Oblinger*, *supra* note 53, at 109.

B. HOW GUNS COMPEL SPEECH

Last, but not least, opponents of compulsory campus carry laws could argue that mandating guns on campus against their wishes violates the First Amendment because it unconstitutionally compels speech in contravention of their beliefs or mission. Outside the context of regulating commercial advertising to prevent false advertising, state governments may not compel a speaker to affirm a belief with which the speaker disagrees.¹²³ “‘Since *all* speech inherently involves choices of what to say and what to leave unsaid,’ one important manifestation of the principle of free speech is that one who chooses to speak may also decide ‘what not to say.’”¹²⁴ This rule applies “to expressions of value, opinion, or endorsement.”¹²⁵

For instance, in *West Virginia State Board of Education v. Barnette*, the U.S. Supreme Court considered whether a compulsory state law and Board of Education regulation that required public school children to salute the American flag upon pain of expulsion violated those children’s First Amendment right to free speech.¹²⁶ Concluding that the flag salute was a form of utterance because its symbolism communicated the idea “of adherence to government as presently organized” and “acceptance of the political ideas it thus bespeaks,” the Court held that compelling the flag salute and pledge violated the students’ First Amendment right to differ in opinion.¹²⁷ In so concluding, the Supreme Court commented that “[a]uthority . . . is to be controlled by public opinion, not public opinion by authority,” and “[i]f there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein.”¹²⁸

Similarly, in *Wooley v. Maynard*, the U.S. Supreme Court held that a New Hampshire statute criminalizing obscuring the State’s motto “Live Free or Die” on passenger vehicle license plates was unconstitutional because it violated individuals’ First Amendment right of freedom of thought against state action, which includes both the right to speak freely and the right to refrain from speaking at all.¹²⁹ In that case, a husband and wife who were Jehovah’s Witnesses argued that the slogan on the New Hampshire license plates was “repugnant to their moral, religious, and political beliefs.”¹³⁰ The Supreme Court agreed that the law unconstitutionally forced these

123. *Hurley v. Irish-American Gay, Lesbian & Bisexual Grp. of Bos.*, 515 U.S. 557, 573 (1995).

124. *Id.* (quoting *Pac. Gas & Elec. Co. v. Pub. Utils. Comm’n of Cal.*, 475 U.S. 1, 11, 16 (1986)).

125. *Id.*

126. *See generally* *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943).

127. *Id.* at 632–34, 641–42.

128. *Id.* at 641, 642.

129. *See* *Wooley v. Maynard*, 430 U.S. 705, 715–17 (1977).

130. *Id.* at 707.

individuals to be an “instrument” for publicly expressing an ideological point of view that they found unacceptable.¹³¹ The Court noted that concluding that the husband and wife’s interests implicated First Amendment protections “did not end [the] inquiry however. We must also determine whether the State’s countervailing interest is sufficiently compelling to justify requiring appellees to display the state motto on their license plates.”¹³² The Court reasoned that the interests articulated by the State—to “facilitate[] the identification of passenger vehicles” by law enforcement and “promote[] appreciation of history, individualism, and state pride” were not sufficiently compelling interests.¹³³ As to the identification argument, the Court pointed out that New Hampshire’s passenger license plates had distinctive letters and numbers, so passenger license plates were already readily identifiable without the State motto.¹³⁴ Moreover, the Court reasoned that even if it found this to be a legitimate and substantial government purpose, “that purpose cannot be pursued by means that broadly stifle fundamental personal liberties when the end can be more narrowly achieved.”¹³⁵ Regarding the State’s interest to foster appreciation of history, State pride and individualism, the Court held “where the State’s interest is to disseminate an ideology, no matter how acceptable to some, such interest cannot outweigh an individual’s First Amendment right to avoid becoming the courier for such message.”¹³⁶

Finally, in *Hurley v. Irish-American Gay, Lesbian, & Bisexual Group of Boston*, the Supreme Court considered whether a Massachusetts public accommodations law prohibiting discrimination based upon sexual discrimination was unconstitutional as applied to compel private organizers of a St. Patrick’s Day Parade to permit an Irish, homosexual, and bisexual organization to participate in the parade with their own banner.¹³⁷ The parade organizers argued that forcing them to allow the gay and bisexual organization to march would compel them to impart a message to the community that the parade organizers did not wish to convey.¹³⁸ First, the Court observed that parades are a form of expression since the point of a parade is not just to get from one point to the other but to display a collective point to onlookers.¹³⁹ Then the Court held that the law as applied in this case violated the organizers’ freedom of speech because the Commonwealth could

131. *Id.* at 715.

132. *Id.* at 715–16.

133. *Id.* at 716–17.

134. *Id.*

135. *Id.* at 716.

136. *Id.* at 717.

137. *Hurley v. Irish-American Gay, Lesbian & Bisexual Grp. of Bos.*, 515 U.S. 557, 561, 566 (1995).

138. *See id.* at 581.

139. *Id.* at 568.

not use its power to compel a message with which the parade organizers disagreed.¹⁴⁰

Barnette and *Hurley* demonstrate that some state legislation that seemingly only compel action can actually have the effect of compelling expression as well, even if it does not explicitly do so on its face. For example, in *Barnette*, the state law compelling students to salute the American flag was seen as compelling speech endorsing the government. In *Hurley*, a state law compelling a private organization to permit homosexuals and bisexuals to participate in its Irish Day Parade was viewed as compelling a message endorsing that lifestyle. Likewise, here, state laws that force public university faculty to permit concealed carrying of firearms inside their classrooms force them to communicate a message endorsing firearms. As posited earlier, when faculty are teaching in the classroom, they are speaking as private citizens about matters of public concern because their role is to provoke thought on important and sometimes sensitive and controversial topics. Compulsory campus carry laws force individual administrators and professors to be a courier of an ideological message that they might find politically or morally offensive or otherwise unacceptable—arming ordinary citizens on campuses makes colleges and universities safer. College and university administrators and faculty forced to permit CHLs to carry firearms on campus, including inside academic buildings, will also presumably have to create rules and regulations concerning the carrying of firearms on campus,¹⁴¹ which further forces them to be an instrument or courier of a gun-rights message that they do not wish to endorse. Thus, compulsory campus carry laws also violate the First Amendment by compelling speech.¹⁴²

As pointed out in *Wooley*, however, just because compulsory campus carry laws implicate First Amendment protections does not end the inquiry. To find the legislation is unconstitutional on First Amendment free speech grounds, a court will also have to find that the State has a compelling countervailing interest for compelling colleges and universities to arm campuses. Presumably, States with compulsory campus carry laws will argue that its compelling countervailing interest is to allow individuals with a CHL the opportunity to protect themselves if confronted by an armed shooter or other threat of lethal violence.

However, the legislation is not narrowly tailored to achieve this purpose. There are other ways to protect those on campus from gun violence other than arming ordinary citizens with CHLs, including mandating the

140. *Id.* at 581.

141. See TEX. GOV'T CODE ANN. § 411.2031(d-1) (West 2016) (requiring that the President, “[a]fter consulting with students, staff, and faculty” devise “reasonable rules, regulations, or other provisions” concerning the carrying of guns on campus).

142. It should be noted that pro-concealed carry advocates could posit that this argument cuts both ways. They might argue that laws prohibiting firearms on college campuses forces them to endorse an anti-firearm message that they find personally objectionable.

installation of metal detectors, installing panic buttons in all classrooms and faculty offices, and otherwise providing better campus security.

Additionally, there is no substantial evidence that armed citizens are better able to stop a mass shooter than unarmed ones. For example, the fact that there were armed citizens at Umpqua Community College in Oregon when a mass shooting was taking place did not prevent the shooting.¹⁴³ Additionally, as mentioned earlier, a recent FBI Report studying 160 active shooting incidents at various public places, including businesses, schools, open spaces, government property, houses of worship, and healthcare facilities, from 2000 to 2013, found that only five of the 160 shooting incidents were stopped by armed non-law-enforcement individuals.¹⁴⁴ This is despite the fact that in some of these places concealed carry was permitted. In contrast, unarmed heroes stopped 21 mass shooting incidents.¹⁴⁵ Thus, a person carrying a concealed firearm will probably fare no better than a person without one in a random mass shooting situation on a public college campus. Accordingly, there is no compelling State interest for forcing colleges and universities to permit guns on campus.

IV. SECOND AMENDMENT ARGUMENT FOR ARMING CAMPUSES

On the other hand, proponents of campus carry argue that they have a Second Amendment right to carry firearms on public college and university grounds for self-defense.¹⁴⁶ Their primary contention is that firearm bans make higher education institutions more attractive targets for mass shooters because criminals, by their very nature, do not follow the law and are not going to adhere to rules precluding firearms; accordingly, the law should allow the “good guys” to be armed too.¹⁴⁷

In *District of Columbia v. Heller*, the United States Supreme Court recognized for the first time that an individual has the right to possess a firearm in the home for self-defense, separate and apart from a militia.¹⁴⁸ In that case, a special police officer, who could carry a firearm while on duty, was

143. Wanda Moore, *Oregon Gun Laws Allow Concealed-Carry on Campuses*, KTVZ (Sept. 1, 2016, 3:26 AM), <http://www.ktvz.com/news/bend/oregon-gun-laws-allow-concealed-carry-on-campuses/68840900>; Valentine, *supra* note 81.

144. U.S. DEP'T OF JUSTICE, *supra* note 76, at 11–12 (2013).

145. *Id.* at 11.

146. STUDENTS FOR CONCEALED CARRY, <http://concealedcampus.org/about> (last visited May 10, 2017).

147. David B. Kopel, *Pretend “Gun-Free” School Zones: A Deadly Legal Fiction*, 42 CONN. L. REV. 515, 517 (2009) (arguing complete bans on firearms are “extremely dangerous” because they make schools attractive targets for mass shooters); Evan Defilippis & Devin Hughes, *The Numbers on Arming College Students Show Risks Outweigh Benefits*, THE TRACE (Nov. 9, 2015), <https://www.thetrace.org/2015/11/campus-carry-self-defense-accidental-shootings-research>.

148. *District of Columbia v. Heller*, 554 U.S. 570, 636 (2008); Richard L. Aynes, McDonald v. Chicago, *the Fourteenth Amendment, the Right to Bear Arms and the Right to Self-Defense*, 2010 CARDOZO L. REV. DE NOVO 170, 170–71.

denied a license to carry a firearm in his home by the District of Columbia.¹⁴⁹ Accordingly, he challenged the District of Columbia statutes precluding the possession of a firearm in the home without a license and requiring firearms in the home to be unloaded and disassembled, on Second Amendment grounds.¹⁵⁰ The U.S. Supreme Court agreed the legislation in question violated the Second Amendment, which protects “the right of law-abiding, responsible citizens to use arms in defense of hearth and home.”¹⁵¹ The Court explained, however, that the Second Amendment right to bear arms was not absolute, and “longstanding prohibitions on the possession of firearms”—like “laws forbidding the carrying of firearms in sensitive places such as schools and government buildings”—were not called into doubt by its decision and are “presumptively lawful.”¹⁵²

Subsequently, in *McDonald v. City of Chicago*, the Supreme Court extended *Heller* to the States through the Fourteenth Amendment.¹⁵³ Since *Heller* and *McDonald*, no court has expressly held that there is a Second Amendment right to carry firearms on college campuses.¹⁵⁴ Thus, the issue of whether such a right exists remains an open question, setting the stage for a potential conflict between individuals’ Second Amendment right to bear arms with individuals’ First Amendment right to academic freedom and free speech.

V. RESOLUTION OF POTENTIAL CONFLICT BETWEEN FIRST AND SECOND AMENDMENTS

Should a court be faced with deciding whether the First or Second Amendment should prevail in a compulsory campus carry case, the court should find that the First Amendment predominates for several reasons—the most persuasive being that there is no Second Amendment right to carry guns on campus.

149. *Heller*, 554 U.S. at 575–76.

150. *Id.* at 574–76.

151. *Id.* at 635.

152. *Id.* at 626, 627 n.26.

153. *McDonald v. City of Chicago*, 561 U.S. 742, 749–50 (2010).

154. While some students have challenged firearm bans at higher educational institutions, courts have resolved those issues on state statutory grounds and not on the Second Amendment. *See generally* *Students for Concealed Carry on Campus, LLC v. Regents of the Univ. of Colo.*, 280 P.3d 18 (Colo. App. 2010); *Or. Firearms Educ. Found. v. Bd. of Higher Educ.*, 264 P.3d 160 (Or. Ct. App. 2011). Specifically, courts have indicated that where states implement firearm bans at higher educational institutions through legislation making clear that only the State can regulate the carrying of concealed firearms, no other municipality or arm of the State can regulate firearms as unlawful, because those States clearly intended to preempt the field. *Students for Concealed Carry on Campus, LLC*, 280 P.3d at 26, 29; *Or. Firearms Educ. Found.*, 264 P.3d at 161–65.

A. NO CONSTITUTIONAL RIGHT TO CARRY CONCEALED FIREARMS ON CAMPUS

The *Heller* decision itself recognized that prohibitions of guns “in sensitive places such as schools” are presumptively lawful,¹⁵⁵ and there is nothing in the opinion that indicates that the Court did not intend for colleges and universities to be encompassed in the term “schools.” Additionally, in *Heller*, the Supreme Court noted that “the majority of the 19th-century courts . . . held that prohibitions on carrying concealed weapons were lawful under the Second Amendment or state analogues.”¹⁵⁶ Last, but not least, *Heller* only considered the constitutionality of a statute that essentially prohibited the possession of a functional, loaded handgun in one’s residence;¹⁵⁷ thus, read narrowly, the opinion stands for nothing more than the proposition that American citizens have an individual Second Amendment right to possess firearms in their *home* for self-defense.¹⁵⁸ It did not recognize a Second Amendment right to carry a firearm outside the home.

While, post-*Heller*, the U.S. Supreme Court has not addressed whether there is a Second Amendment right to bear concealed firearms in public, the majority of lower courts that have addressed the issue have found that there is not.¹⁵⁹ This is because a State can reasonably conclude that concealed firearms in public places pose a danger to public safety and “public safety interests often outweigh individual interests in self-defense.”¹⁶⁰

Only a handful of courts have extended *Heller* to confer a right to carry a firearm outside the home.¹⁶¹ For example, in *Moore v. Madigan*, the Seventh Circuit Court of Appeals held that Illinois statutes that generally banned the carrying of ready-to-use firearms in public violated the Second Amendment.¹⁶² In reaching this conclusion, the court seized upon *Heller*’s language that the Second Amendment “guarantee[s] the individual right to possess and carry weapons in case of confrontation,” and “[c]onfrontations are not limited to

155. *District of Columbia v. Heller*, 554 U.S. 570, 626, 627 n.26 (2008).

156. *Id.* at 626.

157. *Id.* at 574–76.

158. Michael J. Habib, Note, *The Future of Gun Control Laws Post-McDonald and Heller and the Death of One-Gun-Per-Month Legislation*, 44 CONN. L. REV. 1339, 1350 (2012) (noting that after *Heller*, “as a matter of law, all that is known for certain is that the Second Amendment protects the right of individuals to keep and bear a handgun, in the home, for self-defense”).

159. *See, e.g.*, *Peruta v. City of San Diego*, 824 F.3d 919, 939 (9th Cir. 2016); *Drake v. Filko*, 724 F.3d 426, 429–30 (3d Cir. 2013); *Peterson v. Martinez*, 707 F.3d 1197, 1201 (10th Cir. 2013); *Hightower v. City of Boston*, 693 F.3d 61, 73 (1st Cir. 2012); *Gamble v. United States*, 30 A.3d 161, 169 (D.C. 2011).

160. *United States v. Masciandaro*, 638 F.3d 458, 470 (4th Cir. 2011).

161. *See, e.g.*, *Moore v. Madigan*, 702 F.3d 933, 935–36 (7th Cir. 2012); *Grace v. District of Columbia*, 187 F. Supp. 3d 124, 135–38 (D.D.C. 2016).

162. *See Moore*, 702 F.3d at 942.

the home.”¹⁶³ Additionally, the court explained that “one doesn’t have to be a historian to realize that a right to keep and bear arms for personal self-defense in the eighteenth century could not rationally have been limited to the home.”¹⁶⁴ The court stated there was a need for self-defense beyond the home when, for example, someone living in the Wild West had to leave their house to obtain supplies and possibly could have been confronted by hostile Native Americans en route.¹⁶⁵ The court stressed that public violence in Illinois today is just as acute as it was in the 18th century, given that in Chicago most murders occur outside the home.¹⁶⁶

Relying upon the *Moore* case, supporters of compulsory campus carry laws could argue that given the national and international epidemic of public mass shootings, the need to bear firearms on college campuses is also great. The *Moore* court, however, acknowledged that its decision might have been different if the law in question only banned guns in certain places like *public schools* because “a person can preserve an undiminished right of self-defense by not entering those places,” eliminating the need for the government to make a *strong* showing for the curtailment of the right to armed self-defense.¹⁶⁷ Thus, if a student does not feel safe attending an educational institution that bans firearms, the student has the option of attending another school where concealed carry is permitted or he or she could be educated at home. Of course, this argument can cut both ways—students in favor of campus carry could make the opposing argument that faculty have the option of attending a university where firearms are banned. Nevertheless, the law at issue in *Moore* was more constitutionally objectionable because it was a complete ban on carrying firearms outside the home—concealed or otherwise. Therefore, this opinion does not support the proposition that banning concealed firearms in public colleges and universities violates the Second Amendment.

In conclusion, because there is no individual Second Amendment right to carry firearms for protection in schools, courts should not view the compulsory campus carry issue as presenting the collision of two individual constitutional rights but rather as a conflict between State authority and the First Amendment rights of higher education institutions and individuals to academic freedom.¹⁶⁸ In other words, should the State legislature be able to forcibly establish postsecondary schools’ academic policies, which includes

163. *Id.* at 936 (first alteration in original) (quoting *District of Columbia v. Heller*, 554 U.S. 570, 592 (2008)).

164. *Id.*

165. *See id.*

166. *See id.* at 937.

167. *Moore v. Madigan*, 702 F.3d 933, 940 (7th Cir. 2012).

168. *See W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 630 (1943) (finding that the issue of whether a state law and school regulation compelling the pledge of allegiance and salute to the flag did not involve the collision of individual rights but “[t]he sole conflict [was] between authority and rights of the individual”).

firearm policies, when traditionally the U.S. Supreme Court has given the institutions the autonomy to decide these matters?

*B. OTHER JUSTIFICATIONS FOR CHOOSING THE FIRST OVER THE SECOND
AMENDMENT*

Even assuming, *arguendo*, that there is some Second Amendment right to carry firearms to colleges and universities and a constitutional conflict between the First and Second Amendments exists, there are still numerous other justifications for courts to find that the First Amendment should prevail.

First, “[s]tate regulation under the Second Amendment has always been more robust than of other enumerated rights.”¹⁶⁹ For instance, no law could prevent the mentally ill or felons from speaking, but laws prohibiting these same classes of persons from possessing firearms are “presumptively lawful.”¹⁷⁰ Indeed, the Supreme Court recognized an individual right to free speech long before it recognized an individual right to bear arms.¹⁷¹ As early as 1919, the Supreme Court began grappling with the right to free speech, and in 1931, recognized an individual right to free speech.¹⁷² In contrast, the high Court did not recognize an individual right to bear arms until *Heller* in 2008.¹⁷³

Second, the majority of society views freedom of speech as “a constructive, desirable activity that advances personal fulfillment and social welfare,” whereas the freedom to bear arms has a more negative connotation—death; with the exception of hunting for sport, legally shooting firearms is generally done out of necessity to save one’s own life or that of another.¹⁷⁴ Thus, in the higher education context, one would think the need to speak freely is more valued than the need for a firearm because the purpose of attending a college or university is to obtain an education and not to hunt. Moreover, the necessity of a firearm for self-protection on college campuses is less than in other public places as mass shooting incidents rarely occur at public higher education institutions in comparison to other public places. For instance, in an FBI study of active mass shootings from 2000 to 2013, there were only 12 active shootings at higher learning institutions.¹⁷⁵ Additionally, there are other individuals on campus besides concealed handgun licensees that can keep people safe, such as the campus and local police, who are usually armed and trained on how to handle an active shooting situation unlike the

169. *Kachalsky v. Cty. of Westchester*, 701 F.3d 81, 100 (2d Cir. 2012).

170. *Id.* at 100 (quoting *District of Columbia v. Heller*, 554 U.S. 570, 627 n.26 (2008)).

171. *Id.* at 53, 61, 91.

172. *Id.* at 61.

173. *Id.* at 91.

174. Magarian, *supra* note 1, at 56–57 (explaining that “most people, most of the time, think of bearing arms—preparing for their imminent use, or firing them—as at best an instrumental necessity”).

175. U.S. DEP’T OF JUSTICE, *supra* note 76, at 15–16.

average citizen.¹⁷⁶ On the other hand, the need to encourage the robust exchange of ideas at post-secondary schools is extremely high, and there is no one else who can exercise a student or faculty member's freedom of thought or speech.

Third, firearms present an inherent safety hazard whereas speech generally does not. For instance, after a compulsory campus carry law took effect in Idaho in 2014, an Idaho State University instructor accidentally shot himself in the foot during a chemistry lab session after the concealed gun in his pocket went off in front of the class.¹⁷⁷ Not only could students have been injured or killed by the discharged bullet,¹⁷⁸ but additional damage could have been done if the lab contained flammable materials.¹⁷⁹ On January 4, 2012, in Utah, a Weber State University student's concealed handgun accidentally discharged in his pocket, wounding his leg.¹⁸⁰ On November 9, 2012, a University of Denver employee accidentally fired her handgun when she was trying to unjam the weapon while showing it to colleagues.¹⁸¹ Thus, one can anticipate that the increased presence of firearms on campus will lead to an increase in accidental shootings, which could in turn lead to an increase in higher academic institutions' insurance premiums.¹⁸² In contrast, the cost of speech is free.

Fourth, arming ordinary citizens in the classroom could lead to more fatalities, as exemplified by the recent mass shooting at an Orlando gay nightclub, where 49 people were murdered and 53 others were wounded.¹⁸³ Subsequent to the Orlando shootings, reports emerged that some of the innocent people killed in the nightclub were killed by friendly fire from the

176. See *Debate on Armed Police in Schools: Needed for Kid Safety or Part of the Student-to-Prison Pipeline?*, DEMOCRACY NOW (Jan. 16, 2013), https://www.democracynow.org/2013/1/16/debate_on_armed_police_in_schools (providing a transcript of a debate concerning whether the Atlanta Public School System should start having armed police officers). Higher educational institutions are better situated than elementary, middle and high schools, which usually do not have armed officers on-site.

177. *Idaho State University Teacher Accidentally Shoots Self in Class*, CBS NEWS (Sept. 4, 2014, 10:41 AM), <http://www.cbsnews.com/news/idaho-state-university-teacher-accidentally-shoots-self-in-class>.

178. OFFICE OF THE ATTORNEY GEN., FIREARM SAFETY CERTIFICATE: STUDY GUIDE 10 (2015), <https://www.scribd.com/doc/252897033/Firearm-Safety-Certificate-Study-Guide> (warning firearm users not to shoot at hard surfaces because bullets can ricochet and hit someone other than the intended target).

179. See Chris Pleasance, *Faster Than a Speeding Bullet: Photographer Captures Split Second After Gun Is Fired* (Dec. 29, 2013, 1:53 PM), <http://www.dailymail.co.uk/news/article-2530747/Faster-speeding-bullet-Photographer-captures-split-second-gun-fired.html>. It is possible that the energy released by a firearm will ignite combustible materials or chemicals.

180. Defilippis & Hughes, *supra* note 147.

181. *Id.*

182. Oblinger, *supra* note 53, at 115.

183. Valerie Bauerlein et al., *Terror Shooting at Gay Nightclub in Orlando Leaves at Least 49 Dead, 53 Wounded*, WALL STREET J. (June 12, 2016), <https://www.wsj.com/articles/orlando-nightclub-hit-by-shooting-causing-multiple-injuries-1465720691>.

police.¹⁸⁴ If the police could strike innocent bystanders during a mass shooting incident, then surely we cannot expect the average student or professor to have better aim in the same situation. Thus, having multiple individuals with CHLs discharging their firearms at the shooter could result in more fatalities. Significantly, during the Orlando shootings, a trained, armed, off-duty police officer was standing at the door and attempted to stop the shooter but was unsuccessful in disabling the shooter.¹⁸⁵ It is unrealistic and almost farcical to expect a frightened ordinary student or professor to be able to stop an active shooter with a firearm when they presumably do not receive as much training as a person in law enforcement. Moreover, a handgun—the most common concealed weapon—is no match for a military-style assault rifle that can release 30 to 100 rounds in quick succession.¹⁸⁶ Additionally, permitting ordinary citizens to carry firearms on campus may confuse the police in an active-shooting situation, making it difficult for the police to decipher who is the perpetrator and who is the CHL hero, which could result in the police accidentally shooting the wrong person.¹⁸⁷

Fifth, a blanket state law mandating the allowance of concealed firearms on all public college campuses does not consider the unique characteristics of each individual college and university within the state, such as the nature of its student body and school. For example, law schools tend to have more stressful and hostile environments than undergraduate institutions.¹⁸⁸ This is because in law school, students are expected to master an inordinate amount of material and vigorously compete for grades, as only a handful of “A’s” can be awarded.¹⁸⁹ Students who cannot attain a certain grade point average by the end of the semester or year could be academically dismissed—their dream

184. See David K. Li, *The Final Moments of the Orlando Nightclub Massacre*, N.Y. POST (June 13, 2016, 9:10 AM), <http://nypost.com/2016/06/13/the-final-moments-of-the-orlando-gay-club-massacre> (acknowledging that the Orlando Police Chief could not discount the possibility that some of the 49 victims killed at nightclub were shot by police officers).

185. Bauerlein, *supra* note 184; Chas Danner et al., *Orlando Gunman Discussed ISIS with Police, Called Boston Bombers His ‘Homeboys,’* N.Y. MAG. (June 13, 2016, 7:34 PM), <http://nymag.com/daily/intelligencer/2016/06/orlando-nightclub-shooting-leaves-20-dead.html>.

186. Spiewak, *supra* note 80 (pointing out that a 9mm handgun can only hold 14 rounds and go through one target, whereas an AR-15 rifle can hold “30, 60 and even 100 rounds” and “travels at a much faster velocity . . . through several things before stopping”).

187. *Making Various Changes Relating to Concealed Firearms: Hearing on S.B. 231 Before the S. Comm. on Gov’t Affairs*, 2011 Leg., 76th Sess. 23–27 (Nev. 2011) (statement of Adam Garcia, Chief, Police Services, University of Nevada, Reno).

188. See Neal A. Whitman et al., *Student Stress: Effects and Solutions*, ERIC DIG., no. 284514, at 1, 2–3 (1985) (suggesting that the biggest stressors for undergraduate students are being away from home and fear of dropping out, whereas law students’ stress comes from having little control over how they are taught material because of the Socratic Method and little feedback until after their exams).

189. Patricia A. Wilson, *Recreating the Law School to Increase Minority Participation: The Conceptual Law School*, 16 TEX. WESLEYAN L. REV. 577, 591–92 (2010) (recognizing that the current grading system in most law schools—which relies on a mandatory curve—results in students competing for one of the ten percent of allocated “As,” and sometimes results in a student receiving a better or worse grade than they deserve).

of being an attorney dashed or at least delayed.¹⁹⁰ Moreover, students' employment prospects and potentiality for a high salary are greatly contingent upon them graduating at the top of their class,¹⁹¹ and with employment opportunities dwindling and student loans steadily soaring,¹⁹² the need to earn a high grade point average is especially great. The pressure to be at the top of the class has caused some students to take unsavory measures, such as stealing pages out of books that other students need to complete a graded assignment or intentionally misleading classmates to get ahead.¹⁹³ Considering this incredibly stressful environment, it is imprudent to give law students one more thing to worry about—whether the person sitting next to them in class or their teacher has a gun.

Sixth, a significant number of college students suffer from mental illness. The typical college-aged students (persons 18 to 25 years of age) have the highest rate of mental health issues,¹⁹⁴ and a significant number of students suffer from some form of clinical depression, anxiety, and other stress-related mental health illnesses.¹⁹⁵ Accordingly, it is especially legislatively unwise to arm college-aged students.

190. Thomas A. Schweitzer, "Academic Challenge" Cases: Should Judicial Review Extend to Academic Evaluations of Students?, 41 AM. U. L. REV. 267, 270 (1992) ("Dismissals are typically for failure to maintain a satisfactory grade point average (GPA), and a single low grade can reduce a marginal student's GPA below the minimum acceptable grade point average for retention or graduation." (footnote omitted)).

191. See Cliff Collins, *Salary Scramble: Demand for New Associates and Laterals is Keeping Many Recruiters Busy*, 60 OR. ST. B. BULL. 9, 13–14 (2000) (recognizing that top law firms are very "choosy" and only look for students in the top of their class from top-tiered law schools).

192. Jeena Cho, *10 Lessons Law School Didn't Teach You*, 40 MONT. LAW. 20, 21 (2015) (reporting that most law students graduate with \$150,000 in debt or more); Luz E. Herrera, *Training Lawyer-Entrepreneurs*, 89 DENV. L. REV. 887, 888 (2012) (acknowledging that "a large number of recent law graduates are unemployed, under-employed, or are working in settings that do not require a bar license").

193. Cho, *supra* note at 192, at 21 (recounting how pages she needed from a book in the library for her Legal Research and Writing class in law school had been torn out of the book—an "all too familiar" tale from law school).

194. Brian J. Siebel, *The Case Against Guns on Campus*, 18 GEO. MASON U. CIV. RTS. L.J. 319, 327 (2008).

195. Paula Davis-Laack, *The Science of Well-Being and the Legal Profession*, 83 WIS. LAW. (2010), <http://www.wisbar.org/newspublications/wisconsinlawyer/pages/article.aspx?Volume=83&Issue=4&ArticleID=2033> ("Research spanning almost two decades has shown that before law school, future law students are as emotionally healthy as the general population; however, just six months into law school, negative symptoms such as anxiety and depression increase dramatically and continue throughout all three years of law school, with as many as 20-40 percent of students being clinically depressed." (footnotes omitted)); see also Ruth Ann McKinney, *Depression and Anxiety in Law Students: Are We Part of the Problem and Can We Be Part of the Solution?*, 8 J. LEGAL WRITING INST. 229, 229 (2002) (acknowledging that "law school is a breeding ground for depression, anxiety, and other stress-related illnesses").

Last but not least, evidence confirms that more guns do not make people safer.¹⁹⁶ In one study, a researcher specifically found that there is no correlation between permitting concealed weapons and the reduction of crime, debunking the argument that concealed firearms lead to fewer criminal offenses.¹⁹⁷ In another study conducted by a criminologist on mass shootings committed in 25 wealthy countries between 1983 and 2013, including the United States, a criminologist found that the United States had nearly double the number of mass shootings than all the other countries combined—78.¹⁹⁸ The country with the second highest mass shootings rate was Germany, which had seven.¹⁹⁹ Indeed, the criminologist scientifically concluded that “[t]he higher the gun ownership rate, the more a country is susceptible to experiencing mass shooting incidents.”²⁰⁰ He further noted that his findings were consistent with a report issued by the United Nations Office on Drugs and Crime that “countries with higher levels of firearm ownership also have higher firearm homicide rates.”²⁰¹ Finally, another recent study found that more firearm ownership leads to more armed robberies, assaults and homicides.²⁰² Accordingly, even if a court were to recognize a Second Amendment right to carry a concealed handgun onto public colleges and universities, there are numerous reasons for concluding that an individual’s right to self-defense should give way to the First Amendment rights to academic freedom and free speech, as well as to public safety.

VI. CONCLUSION

While there are a variety of First Amendment attacks to compulsory campus carry laws that can be made, there is no countervailing Second Amendment right to carry firearms on college campuses. Even if a court were to recognize such a right, the First Amendment rights to academic freedom and free speech trump this individual right to self-defense because firearms have a chilling effect on freedom of thought and speech, and these rights are more valued than firearms.

If states are allowed to continue to force firearms upon college campuses, the quality of higher education will be compromised. Universities may lose good professors who elect to seek employment elsewhere where guns are

196. Frederic Lemieux, *More Guns Do Not Make the United States Safer*, SLATE (Dec. 3, 2015, 11:15 AM), http://www.slate.com/articles/health_and_science/science/2015/12/research_on_mass_shootings_shows_guns_do_not_make_u_s_safe.html.

197. Jonathan Silver, *Study: Concealed Handgun Permits Don’t Affect Crime Rates*, TEX. TRIB. (Sept. 24, 2015, 7:28 PM), <https://www.texastribune.org/2015/09/24/study-says-concealed-carry-permits-dont-affect-cri>.

198. Lemieux, *supra* note 196.

199. *Id.*

200. *Id.*

201. *Id.*

202. Stephanie Pappas, *Guns Don’t Deter Crime, Study Finds*, LIVE SCI. (July 6, 2015, 9:42 AM), <http://www.livescience.com/51446-guns-do-not-deter-crime.html>.

disallowed.²⁰³ Some may forego live teaching for online classes for their own safety. I, myself, am contemplating how to deal with the increased danger to my safety resulting from Texas's campus carry law that will soon take effect, including purchasing a bulletproof vest and protective headgear. With more and more states adopting campus carry, it is only a matter of time before the Supreme Court will be forced to address the constitutional issues raised in this Article.²⁰⁴

In the meantime, colleges and universities compelled to permit firearms may take a number of steps to make their campuses safer. First, colleges and universities can designate as many gun-free zones on campus as their state's law will allow. For instance, there are some areas where courts should agree firearms should be prohibited—those areas where concealed firearms are prohibited in the general public under most states' concealed carry laws, such as daycares, places where alcohol is served, large sporting arenas where a large crowd may be gathered, mental health facilities, and places like labs containing explosives.²⁰⁵ Additionally, some universities in compulsory campus carry states permit faculty and staff to make their personal office spaces gun-free areas.²⁰⁶

Second, professors can discourage students from carrying firearms in their classrooms by reminding students that only *concealed* possession of firearms is permissible, and if any part of the gun is visible or one can tell you have a gun by ordinary observation, the student could be charged with a criminal offense, expelled, or both.

Third, if possible, firearms should be banned in dormitory rooms, given the high rate of suicide among the typical college-aged students.²⁰⁷ If this is

203. See, e.g., Liam Stack, *Dean at University of Texas Resigns in Part Over Handgun Law*, N.Y. TIMES (Feb. 27, 2016), <http://www.nytimes.com/2016/02/27/us/dean-at-university-of-texas-resigns-in-part-over-handgun-law.html> (The dean of the University of Texas's School of Architecture, Dr. Frederick Steiner, resigned partially because of the Texas Campus Carry law that took effect on August 1, 2016, stating that: "There are all kinds of very stressful situations at a university, and I can't conceive of how someone would think that introducing a firearm into that context would be constructive in any way.").

204. Recently, three University of Texas professors sued the university and the State of Texas, seeking an injunction to stop the campus carry law from taking effect in their state, partially on the ground that students carrying concealed firearms in their classrooms "chills their First Amendment rights to academic freedom." Matthew Watkins, *Three UT Professors Sue to Block Campus Carry*, TEX. TRIB. (July 6, 2016, 4:46 PM), <https://www.texastribune.org/2016/07/06/3-ut-austin-professors-sue-state-over-campus-carry>; see also notes 86–94 and accompanying text.

205. See, e.g., Lauren McGaughy et al., *Campus Carry Tracker*, DALL. MORNING NEWS (Aug. 3, 2016), <http://interactives.dallasnews.com/2016/campus-carry-tracker> (showing that the majority of Texas colleges and universities are banning the concealed carrying of firearms in places where firearms are banned in public under its concealed carry law).

206. For instance, my university, Thurgood Marshall School of Law at Texas Southern University, leaves it up to the discretion of faculty, staff and other employees with offices whether to ban firearms in their office spaces.

207. Joy Blanchard, *University Tort Liability and Student Suicide: Case Review and Implications for Practice*, 36 J.L. & EDUC. 461, 461 (2007) ("Student suicides are becoming increasingly prevalent

not an option, students who potentially could be eligible for a CHL (those who served in the military or are 21 years or older with no mental health or criminal history), should be given a dormitory option that is separate from the rest of the population in dormitory rooms. In other words, there should be dormitory halls set aside just for these individuals.

Fourth, everyone should be on high alert for students or faculty displaying signs of mental illness and propensity toward violence and report them to the proper authority immediately. Ideally, the college or university administration should establish an odd-numbered task force consisting of at least one administrator, one faculty member, one student, and one mental health professional to assess whether a student, faculty member or other employee who has been reported as posing a threat to the campus community is actually dangerous and needs to be dismissed from the school for security purposes.²⁰⁸ If a majority of the committee finds the individual reported poses a threat, that person should be expelled immediately from the postsecondary institution. Of course, the student should have the right to appeal the decision and have an opportunity to have a hearing on the matter to prove they do not pose a danger to the college community.

Fifth, everyone on campus, including students, faculty, and staff, should be trained on what to do in an active shooting situation.²⁰⁹ If feasible, administrators and faculty should undergo active shooting drills annually so

on college campuses” and mental illness is prevalent among young people and can carry over into collegiate years.).

208. For example, Pima Community College suspended a student after he began displaying odd and dangerous behavior, including making outbursts in class about “blowing up babies” and posting a YouTube video with him walking around the college at night threatening to harm people. *Documents Paint Portrait of Loughner’s Unhinging*, CBS NEWS (Jan. 13, 2011, 8:24 AM), <http://www.cbsnews.com/news/documents-paint-portrait-of-loughners-unhinging>. After being suspended, the student shot former U.S. Congresswoman Gabrielle Giffords and 17 others at a grocery store, killing six. Marc Lacey & David M. Herszenhorn, *In Attack’s Wake, Political Repercussions*, N.Y. TIMES (Jan. 8, 2011), <http://www.nytimes.com/2011/01/09/us/politics/oggiffords.html>. Arguably, the college’s quick thinking prevented a mass shooting from occurring on the campus.

209. There are numerous training videos available online that demonstrate how to survive an active shooting incident on a college campus. See, e.g., Concordia Univ. of Edmonton, *Shooter on Campus: Know You Can Survive*, YOUTUBE (June 3, 2014), <https://www.youtube.com/watch?v=zQ3Ugbo6Xg> (demonstrating what students and faculty should do in the event of a school shooting); horrygeorgetowntech, *Active Shooter Training for Faculty & Staff*, YOUTUBE (Jan. 23, 2013), <https://www.youtube.com/watch?v=WPX4XASbmXw> (providing an hour-long training of faculty and staff in a lecture format with a PowerPoint; beware the training begins with what appears to be a real-life rampage shooting at a school that is disturbing); The Ohio State Univ.-Admin. & Planning, *Surviving an Active Shooter*, YOUTUBE (Sept. 23, 2015), <https://www.youtube.com/watch?v=gZyzkU—FLQ> (demonstrating how you should react in an active shooter situation on a college campus). First, you should run away from the gunfire and evacuate from the building if this is possible. horrygeorgetowntech, *supra*. If this is not possible, you should lock the door, barricade the door by placing large objects in front of it, and hide outside the line of gunfire or the shooter’s sight. *Id.* If neither one of these options are available, you have to fight for your life, turning everyday objects into weapons—a computer, fire extinguisher, chair, desk, or whatever else can be used to take the shooter down. *Id.* Once the shooter has been incapacitated, remove his or her firearm(s). *Id.*

that they will know what to do should a shooting occur. In reality, permitting CHLs to carry firearms on campus does not make a mass shooting on campus more likely than before CHLs were permitted to carry guns on collegiate premises. However, commonsense dictates that the likelihood of an accidental shooting or someone losing their temper and brandishing or using a gun during an argument or disagreement does increase with the possibility of a significant number of people carry concealed firearms on campus. Accordingly, it is recommended that panic buttons that silently alert the campus or local police of an emergency situation should be installed in every classroom and faculty member's office.

Finally, everyone on campus has a responsibility to reach out to faculty, staff, or students who appear isolated and withdrawn from the rest of the campus community. Most mass shootings are committed by lone wolves.²¹⁰ If we make all individuals feel more a part of the campus community and encourage them to seek professional assistance, the likelihood of them committing a mass shooting decreases. It will take everyone in the college village to keep our ivory towers safe.²¹¹ However, the village does not need to resort to arming average citizens to accomplish this goal at the expense of freedom of expression.

210. Shaundra K. Lewis, *Firearm Laws Redux—Legislative Proposals for Disarming the Mentally Ill Post-Heller and Newtown*, 3 MENTAL HEALTH L. & POL'Y J. 320, 338–39 (2014).

211. *Id.* at 372 (“It takes a village to disarm a mentally ill person planning a public mass murder.”).