

# RETHINKING THE NEVADA CAMPUS PROTECTION ACT: FUTURE CHALLENGES & REACHING A LEGISLATIVE COMPROMISE

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#### INTRODUCTION

On October 22, 2007, Amanda Collins walked with three classmates to the Whalen parking garage after a night class at the University of Nevada, Reno (“UNR”).<sup>1</sup> Collins was a Secondary Education and English student and had just finished a midterm across from the Whalen garage.<sup>2</sup> Collins had purposefully parked here to avoid walking across campus alone.<sup>3</sup> She knew there was “strength in numbers.”<sup>4</sup> Unlike her classmates, Collins had parked on a lower level and left the group to retrieve her car.<sup>5</sup> She was eager to call her boyfriend and discuss the exam.<sup>6</sup> Collins cautiously surveyed around and beneath the vehicle as she approached.<sup>7</sup> As a martial artist and licensed firearms owner, this vigilance came naturally.<sup>8</sup>

James Biela suddenly grabbed Collins from behind and forced her between two vehicles.<sup>9</sup> Biela proceeded to rape Collins at gunpoint for eight minutes on UNR’s “gun free” campus less than 300 yards from campus police services.<sup>10</sup> Biela continued his rampage after Collins by sexually assaulting a second student and strangling Brianna Denison, a teenage visitor at UNR.<sup>11</sup> Biela used his military training, size, and a firearm to terrorize Reno, Nevada for weeks.<sup>12</sup>

<sup>1</sup> *Hearing on S.B. 231 Before the Assemb. Comm. Judiciary*, 2011 Leg., 76th Sess. (Nev. 2011) [hereinafter *Assembly Judiciary Hearing on S.B. 231*] (Exhibit D, prepared testimony of Amanda Collins, at 1 [hereinafter *Collins Exhibit*]).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 2; Matt Woolbright, *Sex-Assault Victim Urges Passage of Campus-Carry Bill*, NEV. APPEAL (Apr. 4, 2013), <http://www.nevadaappeal.com/news/5862503-113/bill-gun-guns-nevada>.

<sup>11</sup> Jaclyn O’Malley, *Tip, DNA Link Suspect to Killing, Other Area Attacks*, RENO GAZETTE-J., Nov. 26, 2008, at 1A.

<sup>12</sup> *Id.* On May 27, 2010, a jury declared James Biela guilty of the first-degree murder and sexual assault of Brianna Denison. Carlin Miller, *Brianna Denison’s Killer, James Biela*,

Collins faulted Biela for the rape, but she did not consider Biela the only party responsible.<sup>13</sup>

During the 76th Regular Session of the Nevada Legislature in 2011, Collins became the first rape victim to publically support changing a Nevada law that currently prohibits the carrying of concealed firearms on the property of the Nevada System of Higher Education (“NSHE”).<sup>14</sup> Nevada permits Collins to carry a concealed firearm (“CCF”),<sup>15</sup> but CCF permit holders must first request written permission from NSHE before carrying on Nevada campuses.<sup>16</sup> NSHE routinely denies these requests.<sup>17</sup> In addition to requesting written permission, NSHE now requires that an individual seeking permission to CCF on a college campus (“campus carry”) demonstrate “a specific risk of attack pre-

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*Gets Death; Mom Says “He Messed with the Wrong Family”*, CBS NEWS (June 3, 2010, 4:47 PM), <http://www.cbsnews.com/news/brianna-denisons-killer-james-biela-gets-death-mom-says-he-messed-with-the-wrong-family/>. He was sentenced to the death penalty. *Id.*

<sup>13</sup> [M]y right to say, “no.” was taken from me by both James Beila [sic] and the Nevada Legislature. At an institution of higher education James Beila [sic] degraded my body by raping me and the current law rendered me defenseless against him by denying me my right as a licensed CCW carrier to have my firearm on campus.

*Collins Exhibit*, *supra* note 1, at 2.

<sup>14</sup> Claudia Cowan, *Opponents of Gun-Free Zones at Universities Find Unlikely Hero in Nevada Woman*, FOX NEWS (Apr. 8, 2011), <http://www.foxnews.com/us/2011/04/08/opponents-gun-free-zones-universities-unlikely-hero-nevada-woman/>; *see also* Woolbright, *supra* note 10 (interview with Amanda Collins in 2013, stating that “[t]here is currently nothing keeping the next James Biela off our campuses”).

<sup>15</sup> *Collins Exhibit*, *supra* note 1, at 3. Throughout this note, when an individual is permitted to “carry a concealed firearm,” this act shall be called “CCF.” This act is also known as carrying a concealed weapon (“CCW”) and other acronyms from state to state. When an individual carries a concealed firearm, a “[c]oncealed firearm” means a loaded or unloaded *handgun* which is carried upon a person in such a manner as not to be discernible by ordinary observation.” NEV. REV. STAT. § 202.3653(1) (2013) (emphasis added). In 2013, the Nevada Legislature replaced the words “pistol, revolver or other firearm” with “handgun” to collectively include any “firearm which has a short stock and is designed to be held and fired by the use of a single hand.” 18 U.S.C. § 921(a)(29)(A) (2012); *see* NEV. REV. STAT. § 202.3653(1) (adopting the federal definition). After this change, CCF permits in the State of Nevada do not distinguish between revolvers and semi-automatic firearms. An individual may now carry any licensed “handgun” with a single CCF permit.

<sup>16</sup> *See* NEV. REV. STAT. §§ 202.265, 202.3673. A discussion of “Nevada campuses” will only include public universities and post-secondary institutions. These universities and institutions are the University of Nevada, Reno; University of Nevada, Las Vegas; College of Southern Nevada; Great Basin College; Truckee Meadows Community College; Western Nevada College; Desert Research Institute; and Nevada State College. *NSHE Institutions*, NEV. SYS. HIGHER EDUC., <http://system.nevada.edu/Nshe/index.cfm/nshe-institutions/> (last visited Dec. 6, 2014). The statutes that govern carrying concealed firearms on public property in Nevada do not bind private universities and institutions in the same way.

<sup>17</sup> Cowan, *supra* note 14; *see also* *Hearing on S.B. 231 Before the S. Comm. Gov’t Affairs*, 2011 Leg., 76th Sess. 33 (Nev. 2011) [hereinafter *Senate Gov’t Affairs Hearing on S.B. 231*] (testimony of José Elique, Chief of Police Servs., Univ. of Nev., Las Vegas [hereinafter *UNLV Chief of Police Testimony*]) (stating that no students are permitted to carry at UNLV); Benjamin Spillman, *Bill Allows Weapons on Campus*, LAS VEGAS REV.-J., Mar. 19, 2011, at 3B (“According to [NSHE], six permit holders made requests at [the University of Nevada, Las Vegas] in the past [eleven] years. All were denied.”).

sented by an actual threat,” “a general risk of attack presented by the nature of the individual’s current or former profession,” or “a legitimate educational or business purpose.”<sup>18</sup>

NSHE’s routine denial of all campus carry requests<sup>19</sup> and the Board of Regents’ new “risk of attack” requirement violate the Second Amendment and impermissibly burden the fundamental right to bear arms for self-defense.<sup>20</sup> The “risk of attack” requirement is not only unconstitutional, but it dangerously disarms law-abiding and statistically less violent individuals of their primary means of self-defense, both on and off campus. However, so long as campus carry opponents and proponents engage in divisive and rhetorical legislative warfare, a compromise between the meaningful access to self-defense and university interests cannot exist.

This note will advocate that the Nevada Legislature revisit the Campus Protection Act during its 78th Regular Session in 2015. Some variation of this legislation would grant full permission to campus carry, some degree of partial permission, or “vehicular permission” on the property of NSHE. Part I of this note will examine the current laws that govern concealed weapons in the State of Nevada. Part II will discuss the origin of the fundamental right to keep and bear arms for self-defense. Part III will contrast the current arguments of campus carry opponents and proponents. Part IV will then compare the various degrees of campus carry throughout the United States including full, partial, and “vehicular permission.” Part V will then examine the prior efforts of the Neva-

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<sup>18</sup> NEV. SYS. OF HIGHER EDUC., BYLAWS OF THE BOARD OF REGENTS § 31(4) (June 2014), available at <http://system.nevada.edu/Nshe/index.cfm/administration/board-of-regents/handbook/>; see S.H. Blannelberry, *Nevada Colleges Add Another Obstacle for Students Hoping to Carry Concealed: They Must Prove Threat*, GUNS.COM (Sept. 12, 2012), <http://www.guns.com/2012/09/12/nevada-colleges-students-carry-concealed-prove-threat/>; see also Kenny Bissett, *CCW Conflict Continues at Nevada*, NEV. SAGEBRUSH, Nov. 27, 2012, at A1, available at <https://www.scribd.com/doc/218723799/Nevada-Sage-brush-Archives-11-27-12> (2012 interview with the UNR President, Marc Johnson, suggesting that an individual must have “a real specific threat to their personal welfare”); NRA, *Nevada: People Wanting to Carry Guns on College Campuses Now Have to Prove Threat*, YOUTUBE (Sept. 11, 2012), <http://www.youtube.com/watch?v=mhaiT0bSoYg> (interview with Amanda Collins in 2012 discussing how the “risk of attack” requirement is a step in the wrong direction).

<sup>19</sup> See *Hearing on A.B. 143 Before the Assemb. Comm. Judiciary*, 2013 Leg., 77th Reg. Sess. (Nev. 2013) [hereinafter *Assembly Judiciary Hearing on A.B. 143*], exhibit D (table of NSHE concealed weapons requests 2011/2012). In 2011 and 2012, NSHE granted only six requests to bring a firearm on campus. *Id.* These requests included three professors for historical or instructional purposes (so long as ammunition was not present) and two campus peace officers for their Law Enforcement Graduation ceremony. *Id.* After the rape, UNR granted Amanda Collins permission to carry her firearm “on condition she would keep it secret.” Spillman, *supra* note 17. “Is it because I was assaulted at gunpoint in a gun-free zone?” Collins asked. *Id.* “Why does it take for somebody to be assaulted in order to be able to defend themselves?” *Id.*

<sup>20</sup> See *infra* Part II (discussing *District of Columbia v. Heller*, *McDonald v. City of Chicago*, *Peruta v. Cnty. of San Diego*, and the fundamental right to “keep” and “bear” arms for self-defense).

da Legislature to grant some degree of campus carry. Part VI will provide recommendations for campus carry proponents to challenge the continued adversity of opponents in the Legislature. Part VII will briefly address the possibility of pursuing campus carry through legal challenges to Nevada's current laws.

#### I. CARRYING CONCEALED FIREARMS IN THE STATE OF NEVADA

This note will first discuss the laws that define who may obtain a CCF permit in the State of Nevada but also what may disqualify an individual from carrying a concealed firearm. This note will also discuss the requisite training and background investigation necessary to obtain or renew a CCF permit.

Nevada is a "shall issue" state that provides CCF permits to any qualified resident or non-resident.<sup>21</sup> "Shall issue" means that when an individual submits a CCF application, the authority that issues permits will grant the application so long as the applicant has satisfied all legislative requirements.<sup>22</sup> In Nevada, this authority is the sheriff of the applicant's county.<sup>23</sup> When compared to "may issue" states, the sheriff has substantially less discretion to deny an individual's CCF application.<sup>24</sup> "May issue" states include California, Connecticut, Delaware, Hawaii, Maryland, Massachusetts, New Jersey, and New York.<sup>25</sup>

In Nevada, an applicant must (1) be legally permitted to possess a firearm, (2) have reached the age of 21, and (3) have demonstrated competence with handguns by completing a firearm safety course.<sup>26</sup> This firearm safety course is approved by the Nevada Sheriffs' and Chiefs' Association ("NSCA") or by an organization that certifies instructors in firearm safety.<sup>27</sup>

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<sup>21</sup> *Concealed Carry Permit Reciprocity Maps*, USA CARRY, [http://www.usacarry.com/concealed\\_carry\\_permit\\_reciprocity\\_maps.html](http://www.usacarry.com/concealed_carry_permit_reciprocity_maps.html) (last visited Nov. 30, 2014). Other "shall issue" states include Alabama, Alaska, Arizona, Arkansas, Colorado, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, West Virginia, Washington, Wisconsin, and Wyoming. *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> NEV. REV. STAT. § 202.3657(1) (2013).

<sup>24</sup> *Concealed Carry Permit Reciprocity Maps*, *supra* note 21.

<sup>25</sup> *Id.*

<sup>26</sup> NEV. REV. STAT. § 202.3657(3)(a)–(c).

<sup>27</sup> *Id.* § 202.3657(3)(c)(1)–(2). The NSCA requires that prior to applying for a CCF permit, the applicant must complete an eight-hour course on the use of firearms, firearm safety, liability, and applicable CCF laws in the State of Nevada. *Nevada Concealed Handgun Training Standards*, NEV. SHERIFFS & CHIEFS ASS'N 1 (Oct. 1, 2013), [http://www.nvsca.com/documents/Training\\_and\\_Instructor\\_Standards\\_2013.pdf](http://www.nvsca.com/documents/Training_and_Instructor_Standards_2013.pdf). The applicant must then successfully complete a written examination and live fire qualification. *Id.* at 1–2. Of course, these are the minimum requirements, and instructors are permitted to include more advanced scenario-based exercises to supplement these requirements. *See Assembly Judiciary Hearing on S.B. 231*, *supra* note 1, at 8–11 (testimony of Anthony Wojcicki).

When an individual submits a CCF application,<sup>28</sup> the sheriff must deny the application for several reasons. The applicant must not have (1) an outstanding arrest warrant; (2) been declared incompetent or insane; (3) been convicted of a felony or misdemeanor involving force or violence in any state; (4) committed a DUI or habitually used a controlled substance; (5) committed domestic violence; or (6) been placed on parole or probation.<sup>29</sup>

Once an individual submits a CCF application and pays a non-refundable fee,<sup>30</sup> the sheriff submits the applicant's fingerprints to the Federal Bureau of Investigation.<sup>31</sup> The background investigation of the applicant's criminal history may take up to 120 days.<sup>32</sup> When an applicant renews a CCF permit,<sup>33</sup> the individual must also undergo a similar investigation and complete a firearms safety course just like new applicants.<sup>34</sup> Furthermore, if a CCF permit holder is charged with a crime involving the use or threatened use of force or violence in any state, the sheriff will immediately suspend that individual's permit.<sup>35</sup>

## II. THE FUNDAMENTAL RIGHT TO KEEP & BEAR ARMS FOR SELF-DEFENSE

Whether the Second Amendment existed solely to maintain "[a] well regulated Militia"<sup>36</sup> or also protected an individual's right to keep and bear arms for self-defense was uncertain until 2008. The Supreme Court resolved this uncertainty in *District of Columbia v. Heller* and held that the Second Amendment does exist to protect an individual's right to keep and bear arms for self-defense.<sup>37</sup> In *McDonald v. City of Chicago*, the Court subsequently held that the Fourteenth Amendment incorporates this fundamental right against the States.<sup>38</sup>

<sup>28</sup> See NEV. REV. STAT. § 202.3657(7) for more information on what a CCF application must include.

<sup>29</sup> This list is not all-inclusive. See *id.* § 202.3657(4).

<sup>30</sup> *Id.* § 202.3657(7)(g). This fee is currently \$98.25. *Concealed Firearms*, LAS VEGAS METRO. POLICE DEP'T, <http://www.lvmpd.com/Permits/ConcealedFirearms/tabid/124/Default.aspx> (last visited Feb. 7, 2015).

<sup>31</sup> NEV. REV. STAT. § 202.366(1).

<sup>32</sup> *Id.* § 202.366(3).

<sup>33</sup> *Id.* § 202.366(4) ("[A] permit expires [five] years after the date on which it is issued.").

<sup>34</sup> *Id.* § 202.3677(1)–(3) ("No permit may be renewed . . . unless the permittee has demonstrated continued competence with handguns by successfully completing a course prescribed by the sheriff renewing the permit."). An applicant renewing his CCF permit must complete a four-hour course on the use of firearms, firearm safety, liability, and applicable CCF laws in the State of Nevada. *Nevada Concealed Handgun Training Standards*, *supra* note 27, at 2. While this applicant does not complete a written examination, like new applicants, this individual must still successfully complete the same live fire qualification. *Id.* at 2–3.

<sup>35</sup> NEV. REV. STAT. § 202.3657(6).

<sup>36</sup> See U.S. CONST. amend. II ("A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.").

<sup>37</sup> *District of Columbia v. Heller*, 554 U.S. 570, 635 (2008).

<sup>38</sup> *McDonald v. City of Chicago*, 561 U.S. 742, 791 (2010). This note will only discuss *Heller* and *McDonald* briefly because the Court's reasoning is not the primary focus of the note.

Some courts suggest that *Heller* and *McDonald* only protect handgun possession in the home, but the Court of Appeals for the Seventh Circuit disagreed.<sup>39</sup> In *Moore v. Madigan*, the Seventh Circuit held that a right to bear arms “implies a right to carry a loaded gun *outside* the home” by distinguishing between the words “keep” and “bear.”<sup>40</sup> In *Peruta v. San Diego*, the Court of Appeals for the Ninth Circuit joined *Moore* and its interpretation of *Heller* and *McDonald*.<sup>41</sup> Some courts have disagreed with this interpretation, but these same courts have still acknowledged that the Second Amendment may still have some application outside the home.<sup>42</sup>

#### A. *District of Columbia v. Heller*

When a D.C. police officer sued the District of Columbia for prohibiting the private ownership of handguns within its jurisdiction, the District Court for the District of Columbia dismissed the officer’s suit.<sup>43</sup> After the Court of Appeals for the District of Columbia reversed the dismissal, the Supreme Court granted certiorari.<sup>44</sup>

In a 5-4 decision, the Court held that the District of Columbia’s prohibition of the private ownership of handguns was unconstitutional.<sup>45</sup> The Second Amendment protects an individual’s right to keep and bear arms for the defense of self, family, and home.<sup>46</sup> The majority concluded that an individual has a “‘natural right of resistance and self-preservation,’” a “‘right of having and

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These cases simply provide the framework for discussing the fundamental right to keep and bear arms for self-defense and the various degrees of campus carry.

<sup>39</sup> See *Heller*, 554 U.S. at 635 (“[W]e hold that the District’s ban on handgun possession *in the home* violates the Second Amendment, as does its prohibition against rendering any lawful firearm in the home operable for the purpose of immediate self-defense.” (emphasis added)). *But see* *Moore v. Madigan*, 702 F.3d 933 (7th Cir. 2012).

Both *Heller* and *McDonald* do say that “the need for defense of self, family, and property is *most acute*” in the home, but that doesn’t mean it is not acute outside the home. *Heller* repeatedly invokes a broader Second Amendment right than the right to have a gun in one’s home, as when it says that the amendment “guarantee[s] the individual right to possess and carry weapons in case of confrontation.” Confrontations are not limited to the home.

*Id.* at 935–36 (alteration in original) (citations omitted).

<sup>40</sup> *Moore*, 702 F.3d at 936 (emphasis added).

<sup>41</sup> See *Peruta v. Cnty. of San Diego*, 742 F.3d 1144, 1166 (9th Cir. 2014) (“[T]he right to bear arms includes the right to carry an operable firearm outside the home for the lawful purpose of self-defense.”).

<sup>42</sup> See e.g., *Drake v. Filko*, 724 F.3d 426, 430 (3d Cir. 2013) (“Although *Heller* does not explicitly identify a right to *publicly* carry arms for self-defense, it is possible to conclude that *Heller* implies such a right.”); *Woollard v. Gallagher*, 712 F.3d 865, 876 (4th Cir. 2013) (“We . . . assume that the *Heller* right exists outside the home . . . .”); *Kachalsky v. Cnty. of Westchester*, 701 F.3d 81, 89 (2d Cir. 2012) (“[T]he [Second] Amendment must have *some* application in the very different context of the public possession of firearms.”).

<sup>43</sup> *Heller*, 554 U.S. at 576.

<sup>44</sup> *Id.*

<sup>45</sup> *Id.* at 635.

<sup>46</sup> *Id.* at 577.

using arms for self-preservation and defence,” and a “right to possess and carry weapons in case of confrontation.”<sup>47</sup>

The Court cautioned that the right to keep and bear arms for self-defense was not absolute. It did not include “a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.”<sup>48</sup> The Court also emphasized that its holding should not cast doubt on “laws forbidding the carrying of firearms in sensitive places such as schools.”<sup>49</sup> The Court did not define “schools” or discuss the possession of concealed firearms on college campuses specifically.<sup>50</sup>

### B. *McDonald v. City of Chicago*

When several residents of the city of Chicago sued the city for prohibiting the private ownership of handguns within its jurisdiction, the District Court of the Northern District of Illinois dismissed their suit.<sup>51</sup> The District Court upheld the constitutionality of the handgun ban and stated that it had “a duty to follow established precedent . . . even though the logic of more recent caselaw may point in a different direction.”<sup>52</sup> After the Court of Appeals for the Seventh Circuit affirmed the District Court’s dismissal, the Supreme Court granted certiorari.<sup>53</sup>

In a plurality decision, the Court held that the right to keep and bear arms for self-defense was “fundamental to the [Nation’s] scheme of ordered liberty” and “deeply rooted in this Nation’s history and tradition.”<sup>54</sup> This fundamental right was now incorporated against the States.<sup>55</sup> The Court also emphasized that “[s]elf-defense is a basic right, recognized by many legal systems from an-

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<sup>47</sup> *Id.* at 592, 665 (quoting 1 WILLIAM BLACKSTONE, COMMENTARIES \*139–40).

<sup>48</sup> *Id.* at 626.

<sup>49</sup> *Id.*

<sup>50</sup> “Schools” is generally thought to mean pre-kindergarten through grade twelve schools, “not necessarily . . . post-secondary institutions like colleges.” See Michael Rogers, Note, *Guns on Campus: Continuing Controversy*, 38 J.C. & U.L., 663, 668 n.24 (2012) (“Such consideration is particularly relevant because the ages of most college and university patrons are of majority, but that of K-12 are not.”). This distinction is important because as this note discusses the fundamental right to keep and bear arms for self-defense, it is discussing an adult’s right to legally possess and carry a concealed firearm, which children are not legally permitted to do anyway. See NEV. REV. STAT. § 202.3657(3)(a) (2013). If “schools” does not include college campuses because of the lack of school-aged children, then college campuses are not a “sensitive place” in the ordinary sense.

<sup>51</sup> *McDonald v. City of Chicago*, 561 U.S. 742, 752 (2010).

<sup>52</sup> *Id.*

<sup>53</sup> *Id.* at 752–53.

<sup>54</sup> *Id.* at 806 (Thomas, J., concurring in part and concurring in the judgment) (citing *Duncan v. Louisiana*, 391 U.S. 145, 149 (1968) and quoting *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997)).

<sup>55</sup> *Id.* at 791 (plurality opinion).

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cient times to the present” and that “citizens must be permitted ‘to use [handguns] for the core lawful purpose of self-defense.’”<sup>56</sup>

The Court again mentioned the prohibition of firearms in “sensitive places,” but it did not define “schools” or discuss the possession of concealed handguns on college campuses specifically.<sup>57</sup> Whether “schools” includes college campuses is currently uncertain. The court also reiterated that the right to keep and bear arms was not absolute, but it did not define the framework for “reasonable” firearms regulations.<sup>58</sup> States must now pass legislation and the courts must decide whether new laws constitute a reasonable firearms regulation.<sup>59</sup>

### C. *Peruta v. County of San Diego*

When several residents of San Diego County applied to obtain CCF permits, the County denied their applications.<sup>60</sup> While California does permit the carrying of concealed firearms, each applicant must demonstrate “good cause.”<sup>61</sup> The sheriff of the applicant’s county then determines whether the individual has fulfilled this requirement.<sup>62</sup> When the residents of San Diego County could not provide “specific threats” against them, the sheriff determined that the applicants did not demonstrate “good cause” and denied their applications.<sup>63</sup> The residents sued the County and its sheriff.<sup>64</sup> After the district court granted summary judgment for the County, the residents appealed and argued that the “good cause” requirement violates the Second Amendment and impermissibly burdens the fundamental right to bear arms for self-defense.<sup>65</sup>

In a 2-1 panel decision, the Court of Appeals for the Ninth Circuit distinguished the words “keep” and “bear” and held that “carrying a gun outside the

<sup>56</sup> *Id.* at 767–68 (alteration in original) (quoting *District of Columbia v. Heller*, 554 U.S. 570, 630 (2008)).

<sup>57</sup> *Id.* at 786.

<sup>58</sup> *Id.* at 785.

<sup>59</sup> See, e.g., 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 (2011) (discussing how the State must balance campus carry with university interests such as academic freedom); Lewis M. Wasserman, *Gun Control on College and University Campuses in the Wake of District of Columbia v. Heller and McDonald v. City of Chicago*, 19 VA. J. SOC. POL’Y & L. 1, 12–19 (2011) (discussing the various methods of analysis that courts have used to review firearm regulations for reasonableness); Joan H. Miller, Comment, *The Second Amendment Goes to College*, 35 SEATTLE U. L. REV. 235 (2011) (discussing what firearm regulations may survive strict or intermediate scrutiny); Rogers, *supra* note 50, at 668 (discussing whether current firearm regulations would undergo strict or intermediate scrutiny).

<sup>60</sup> *Peruta v. Cnty. of San Diego*, 742 F.3d 1144, 1148 (9th Cir. 2014).

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*

<sup>65</sup> *Id.* at 1149.

home for self-defense comes within the meaning of bear[ing] Arms.”<sup>66</sup> The court further held that San Diego County’s “good cause” requirement violates the Second Amendment and impermissibly burdens the fundamental right to bear arms for self-defense.<sup>67</sup>

The sheriff of San Diego stated that he will not seek a rehearing en banc, but the California Attorney General seeks to intervene.<sup>68</sup> If not permitted to intervene, the State suggests that the court’s holding will upset the State’s discretionary “may issue” status.<sup>69</sup> The sheriff of San Diego does not oppose the State’s intervention, and he is currently refusing to issue CCF permits until the court reaches a final decision or the California Legislature intervenes.<sup>70</sup>

As the court reached its decision in *Peruta*, the Legislature sought to intervene and repeal the “good cause” requirement to carry a concealed firearm in California.<sup>71</sup> Their efforts were unsuccessful.<sup>72</sup> California remains a “may issue” state by law, but some counties have begun to issue CCF permits for “self-defense or personal safety.”<sup>73</sup> Demonstrating “good cause” is no longer required. The Ninth Circuit has joined the Seventh Circuit for now by holding that “good cause” requirements unreasonably burden the fundamental right to bear arms for self-defense. The future of California’s discretionary “may issue” status is uncertain.

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<sup>66</sup> *Id.* at 1167 (alteration in original).

<sup>67</sup> *Id.* at 1179.

<sup>68</sup> Emily Miller, *California Attorney General Tries to Overturn Gun Carry Ruling in 9th Circuit*, WASH. TIMES, Feb. 28, 2014; Press Release, San Diego Cnty. Sheriff’s Dep’t, San Diego Sheriff’s Decision Regarding Ninth Circuit’s Opinion on CCWs (Feb. 21, 2014), available at <http://apps.sdsheriff.net/press/Default.aspx?FileLink=fce6dc6b-e015-4c15-8d6c-4e38b4e212e1>; see also *Edward Peruta v. County of San Diego*, UNITED STATE COURTS FOR THE NINTH CIRCUIT, [http://www.ca9.uscourts.gov/content/view.php?pk\\_id=0000000722](http://www.ca9.uscourts.gov/content/view.php?pk_id=0000000722) (last visited Nov. 30, 2014) (for the State’s Motion to Intervene, Appellants’ Response to Pending Motions to Intervene, and State’s Support of Motion to Intervene).

<sup>69</sup> City News Service, *California Attorney General Appeals Judge’s Ruling on San Diego County’s Gun Rules*, KPBS (Feb. 28, 2014), <http://www.kpbs.org/news/2014/feb/28/california-attorney-general-appeals-judges-ruling-/>; see also Dan Whitcomb, *Court Overturns Concealed-Carry Rule in Blow to California Gun Law*, REUTERS (Feb. 13, 2014, 9:41 PM), <http://www.reuters.com/article/2014/02/14/us-usa-guns-california-idUSBREA1D03D20140214> (discussing how the court’s holding could upset California’s entire regulatory scheme).

<sup>70</sup> Letter from Thomas E. Montgomery, San Diego Cnty. Counsel, to Molly C. Dwyer, Clerk of Court, U.S. Court of Appeals for the Ninth Circuit (May 14, 2014), available at <http://cdn.ca9.uscourts.gov/datastore/general/2014/05/14/10-56971%20Response%20to%20Order.pdf>.

<sup>71</sup> See Assemb. 1563, 2014 Leg., Reg. Sess. (Cal. 2014), available at [http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=201320140AB1563](http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201320140AB1563).

<sup>72</sup> *Id.* (follow “Votes” hyperlink).

<sup>73</sup> See e.g., *CCW License*, ORANGE CNTY. SHERIFF’S DEP’T, CA, <http://ocsd.org/about/info/services/ccw> (last visited Nov. 30, 2014).

## III. CAMPUS CARRY OPPOSITION &amp; SUPPORT

The carrying of concealed firearms in public places, such as college campuses, is a contentious area of law.<sup>74</sup> Campus carry remains a controversial subject in state legislatures throughout the country, and the debate to grant some degree of campus carry will continue in future legislative sessions.<sup>75</sup> That said, if campus carry opponents and proponents continue to engage in divisive and rhetorical legislative warfare, a compromise between the fundamental right to keep and bear arms for self-defense and university interests is unlikely to occur.

A. *Primary Arguments of Campus Carry Opponents*

Students for Gun Free Schools (“SGFS”) is a national campus carry opponent that was founded in response to increased efforts to pass campus carry legislation.<sup>76</sup> If a state were to grant campus carry, SGFS suggests that this action would (1) detract from a healthy learning environment by making students, faculty, and staff feel less safe;<sup>77</sup> (2) create more risk for students because of drug and alcohol use, risk of suicide, and accidental shootings;<sup>78</sup> and (3) not

<sup>74</sup> One reason for this tension may be tragedies such as Newtown, Connecticut (i.e. Sandy Hook Elementary School, 2012); Aurora, Colorado (2012); Blacksburg, Virginia (i.e. Virginia Tech, 2007); and Littleton, Colorado (i.e. Columbine High School, 1999). 25 *Deadliest Mass Shootings in U.S. History Fast Facts*, CNN (Sept. 2, 2014, 8:00 AM), <http://www.cnn.com/2013/09/16/us/20-deadliest-mass-shootings-in-u-s-history-fast-facts/index.html>. Local tragedies also include the recent shootings at a middle school in Sparks, Nevada and a medical center in Reno, Nevada. See Catherine E. Shoichet et al., *Nevada School Shooting: Teacher Killed, Two Students Wounded*, CNN (Oct. 21, 2013, 11:14 PM), <http://www.cnn.com/2013/10/21/justice/nevada-middle-school-shooting/>; Carma Hassan & Michael Martinez, *One Person, Gunman Dead in Shooting at Reno Medical Building*, CNN (Dec. 17, 2013, 9:08 PM), <http://www.cnn.com/2013/12/17/us/reno-hospital-shooting/>.

<sup>75</sup> See *infra* Part IV.

<sup>76</sup> *About Us*, STUDENTS FOR GUN FREE SCH., <http://www.studentsforgunfreeschools.org/aboutus.htm> (last visited Nov. 30, 2014).

<sup>77</sup> *Why Our Campuses Are Safer Without Concealed Handguns*, STUDENTS FOR GUN FREE SCH. 2, <http://www.studentsforgunfreeschools.org/SGFSWhyOurCampuses-Electronic.pdf> (last visited Nov. 30, 2014); see also *Assembly Judiciary Hearing on S.B. 231*, *supra* note 1, at 45 (testimony of Darryl Caraballo, Chief of Police, Coll. of S. Nev.) (discussing the three childcare facilities on campus at the College of Southern Nevada (“CSN”)); *Senate Gov’t Affairs Hearing on S.B. 231*, *supra* note 17, at 23–24 (testimony of Adam Garcia, Chief of Police Servs., Univ. of Nev., Reno [hereinafter *UNR Chief of Police Testimony*]) (discussing the four childcare centers and other programs on campus at UNR that campus carry would expose to potential gun violence); Lewis, *supra* note 59, at 14 (discussing how professors may be afraid to challenge students or give failing grades).

<sup>78</sup> *Why Our Campuses Are Safer Without Concealed Handguns*, *supra* note 77; see also *UNLV Chief of Police Testimony*, *supra* note 17, at 32 (discussing how campus carry would also increase the rate of accidental discharges on campus); Lewis, *supra* note 59, at 24 (discussing the rate of depression and suicide amongst college students and how the access to firearms would increase the success rate of these suicides).

deter campus shooters.<sup>79</sup> SGFS believes that CCF permit holders are not trained to handle dangerous situations like police officers<sup>80</sup> and that these individuals are not always law-abiding citizens.<sup>81</sup> SGFS also believes that the historically low rates of violent crime and homicide on college campuses are the product of strict university firearms policies that restrict the presence of firearms.<sup>82</sup>

Opponents also suggest that universities must foster a safe learning environment “free of coercion, intimidation, and the risk of physical violence,” and concealed firearms would undermine this mission.<sup>83</sup> Universities also have a duty to protect from third parties within their control and currently engage in a variety of preventative strategies to reduce the likelihood of campus violence.<sup>84</sup>

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<sup>79</sup> *Why Our Campuses Are Safer Without Concealed Handguns*, *supra* note 77, at 3. In fact, some scholars suggest that campus carry may promote additional and more violent crime. See Lewis, *supra* note 59, at 15 n.129 (“[S]tudents with guns can become a bigger target for thieves . . . [or] thieves will be more aggressive and may opt to shoot their victims out of fear that they may have a gun.”). In addition to not deterring a campus shooter, campus police may have trouble distinguishing between the shooter and a CCF permit holder. Lisa A. LaPoint, *The Up and Down Battle for Concealed Carry at Public Universities*, 19 COLO. ST. UNIV. J. STUDENT AFF. 16, 19 (2010); see also *Senate Gov’t Affairs Hearing on S.B. 231*, *supra* note 17 unmarked exhibit (prepared testimony of José Elique, Chief of Police Servs., Univ. of Nev., Las Vegas), available at <https://nelis.leg.state.nv.us/76th2011/App#/76th2011/Bill/Meetings/SB231> (follow hyperlink to “UNLV Police Services Testimony”); (“Responding officers always look for anyone with a firearm in their hands or on their person. During these scenarios anyone with a weapon could very likely be shot. . . . [R]eports of an individual with a gun on campus would immediately generate an aggressive response by our police officers who would seek to disarm the person before ascertaining whether or not they were licensed to carry the firearm.”).

<sup>80</sup> *Why Our Campuses Are Safer Without Concealed Handguns*, *supra* note 77, at 5; see also *UNLV Chief of Police Testimony*, *supra* note 17, at 32 (“Unlike police officers, most owners of concealed weapons are not trained to protect themselves or their weapons from [being overpowered by an active shooter.]”); LaPoint, *supra* note 79, at 18 (discussing the belief that insufficient training puts innocent victims in danger if a shooting occurred); Lewis, *supra* note 59, at 22 (discussing how easily the author obtained a CCF permit in the State of Texas).

<sup>81</sup> *Why Our Campuses Are Safer Without Concealed Handguns*, *supra* note 77, at 4; see also Lewis, *supra* note 59, at 21–22 (discussing the violent crimes of some CCF permit holders); *Concealed Carry Killers*, VIOLENCE POL’Y CTR., <http://www.vpc.org/ccwkillers.htm> (last updated Oct. 24, 2014) (a website tracking all non-justifiable homicides and suicides by CCF permit holders since 2007).

<sup>82</sup> *Why Our Campuses Are Safer Without Concealed Handguns*, *supra* note 77, at 1.

<sup>83</sup> See Lewis, *supra* note 59, at 13–14, 19 (discussing how campus carry may chill free speech because students and professors will be less likely to engage in controversial issues); see also *UNLV Chief of Police Testimony*, *supra* note 17, at 33 (discussing how campus carry will have a “chilling effect on the educational process.”); Miller, *supra* note 59, at 235–36 (“[T]he learning environment that colleges seek to maintain depends on the freedom to speak about controversial issues and the freedom to hear differing opinions.”).

<sup>84</sup> See Lewis, *supra* note 59, at 14–15; see also *DiGiacinto v. Rector & Visitors of George Mason University*, 704 S.E.2d 365, 370 (Va. 2011) (“[P]arents who send their children to a university have a reasonable expectation that the university will maintain a campus free of foreseeable harm.”); Miller, *supra* note 59, at 370, 259 n.156 (discussing how universities have a “duty of reasonable care” to protect students, faculty, and visitors from reasonably foreseeable crimes and accidents).

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These strategies include (1) programs to identify at-risk individuals and refer them for counseling services; and (2) background checks for all students, faculty, and staff.<sup>85</sup> Universities also provide campus services to promote campus safety such as Emergency Notification Systems,<sup>86</sup> call boxes,<sup>87</sup> dorm entrance surveillance, and campus escorts.<sup>88</sup> Universities promote these services and provide additional resources to reduce the likelihood of victimization and campus violence such as sex offender registries and self-defense classes.<sup>89</sup>

Opponents claim that campus carry is unnecessary because the rate of violent crime on college campuses is much lower than surrounding neighborhoods.<sup>90</sup> Opponents further advocate for more “commonsensical” methods of protection such as not walking alone at night, situational awareness, and not inviting strangers into dorms.<sup>91</sup> These methods also include the use of less lethal forms of self-defense such as Tasers and defensive sprays.<sup>92</sup> Not surprisingly, opposition to legislative efforts to permit campus carry remains strong

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<sup>85</sup> LaPoint, *supra* note 79, at 20. Inquiring about criminal convictions on student applications is already common practice for many universities, and some universities currently engage in lengthy criminal background checks for new students, faculty, and staff. Stephen D. Lichtenstein, *Protecting the Ivory Tower: Sensible Security or Invasion of Privacy?*, 14 RICH. J.L. & PUB. INT. 421, 457 (2011). Criminal background checks may have even prevented the tragedies at Virginia Tech and the University of Alabama. *See id.* at 458; *Mental Health Files of Virginia Tech Gunman Released*, CNN (Aug. 19, 2009, 4:43 PM), <http://www.cnn.com/2009/CRIME/08/19/virginia.tech.records/> (Seung-Hui Cho at Virginia Tech had spent time in a mental health facility and had a “history of erratic behavior and counseling-based issues”); *Police: Alabama College Shooting Suspect Killed her Brother in 1986*, CNN (Feb. 16, 2010, 9:35 PM), <http://www.cnn.com/2010/CRIME/02/13/alabama.university.shooting/> (Amy Bishop at the University of Alabama had been arrested for fatally shooting her brother in 1986).

<sup>86</sup> In case of a campus emergency, an Emergency Notification System is an automated system that sends a message to the cell phone and email of all students and faculty. *See Emergency Notification System*, UNIV. OF NEV., LAS VEGAS, <http://www.unlv.edu/safety/ens> (last visited Nov. 30, 2014).

<sup>87</sup> Scattered throughout a college campus, call boxes are emergency telephones marked with bright blue lights that provide direct communication with a police dispatcher. *See Communications and Dispatch*, UNIV. OF NEV., LAS VEGAS, <http://police.unlv.edu/units/communications.html> (last visited Nov. 30, 2014).

<sup>88</sup> This list is not all-inclusive. *See* Lichtenstein, *supra* note 85, at 458.

<sup>89</sup> The campus police services at University of Nevada, Reno and the University of Nevada, Las Vegas promote a variety of these services. *See University Police Services, a Fully Functioning Law Enforcement Agency*, UNIV. OF NEV., RENO, <http://www.unr.edu/police> (last visited Nov. 30, 2014) (providing campus escort services, a link to the Nevada Sex Offender Registry, free whistles, and workshops about stalking, domestic violence, and rape aggression defense); *Police Services*, UNIV. OF NEV., LAS VEGAS, <http://police.unlv.edu/> (last visited Nov. 30, 2014) (providing campus escort services, a link to the Nevada Sex Offender Registry, and a self-defense workshop).

<sup>90</sup> Lewis, *supra* note 59, at 25; *see also UNR Chief of Police Testimony*, *supra* note 77, at 26–27 (an exchange with Senator Settlemeyer about the safety of UNR and the surrounding community).

<sup>91</sup> Lewis, *supra* note 59, at 25.

<sup>92</sup> *Common Arguments Against Campus Carry*, STUDENTS FOR CONCEALED CARRY, <http://concealedcampus.org/common-arguments/> (last visited Nov. 30, 2014).

with such a variety of campus services, preventative strategies, and the low rate of violent crime on college campuses.<sup>93</sup>

*B. Primary Arguments of Campus Carry Proponents*

Students for Concealed Carry (“SCC”) is a national campus carry proponent that was founded immediately after the Virginia Tech tragedy.<sup>94</sup> SCC suggests that college campuses, while typically safe, are not immune to the violent crime found off campus.<sup>95</sup> These “gun free” zones dangerously disarm law-abiding citizens who could otherwise protect themselves from harm.<sup>96</sup> SCC believes that tragedies such as Virginia Tech demonstrate that campus police services cannot respond swiftly enough to protect innocent lives during an emergency.<sup>97</sup> The potential victim is best equipped to defend himself from imminent bodily injury or death.<sup>98</sup>

Contrary to SGFS’s belief that campus carry would detract from a healthy learning environment, no university has documented an increase in gun related violence, threats, or suicide since 1995.<sup>99</sup> The word “concealed” of carrying a *concealed* firearm is very important to proponents because the purpose of a concealed firearm is to remain undetected.<sup>100</sup> A properly concealed firearm should not detract from a healthy learning environment.<sup>101</sup> CCF permit holders

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<sup>93</sup> See, e.g., *Why Our Campuses Are Safer Without Concealed Handguns*, *supra* note 77 (a 2001 survey found that “94% of Americans answered ‘No’ when asked, ‘Do you think regular citizens should be allowed to bring their guns [onto] college campuses?’”); Bissett, *supra* note 18 (54 percent of UNR students oppose campus carry).

<sup>94</sup> *FAQ*, STUDENTS FOR CONCEALED CARRY, <http://concealedcampus.org/faq/> (last visited Nov. 30, 2014) [hereinafter *SCC FAQ*].

<sup>95</sup> *About*, STUDENTS FOR CONCEALED CARRY, <http://concealedcampus.org/about/> (last visited Nov. 30, 2014) [hereinafter *About the SCC*].

<sup>96</sup> *Id.*

<sup>97</sup> *SCC FAQ*, *supra* note 94.

<sup>98</sup> *Id.*

<sup>99</sup> *Common Arguments Against Campus Carry*, *supra* note 92; see also LaPoint, *supra* note 79, at 17 (discussing the lack of incidents involving the use, threat of use, or theft of a firearm at Colorado State University). The belief that college suicides will increase with campus carry may be exaggerated. For example, in the state of Nevada, an individual must be 21 years old to carry a concealed firearm. NEV. REV. STAT. § 202.3657(3)(a) (2013). The vast majority of suicides are committed in the home and because most college students over the age of 21 live off campus (where the ownership and carrying of a concealed firearm is perfectly legal) there would likely be little to no impact on the number of actual suicides that occur on campus. See *Common Arguments Against Campus Carry*, *supra* note 92. There were 19,392 firearm related suicides in 2010. See MURPHY ET. AL, NAT’L VITAL STATISTICS REPORTS: DEATHS: FINAL DATA FOR 2010, at 51 tbl.12 (2013), available at <http://stacks.cdc.gov/view/cdc/21508>. Nonetheless, some opponents suggest that if an underage student is determined to commit suicide, he may still illegally procure a CCF permit holder’s firearm if this individual lives on campus. See *infra* Part VI.D (discussing campus safety, dorms, and community lockups).

<sup>100</sup> *Common Arguments Against Campus Carry*, *supra* note 92.

<sup>101</sup> *Id.*

are also five times less likely than non-permit holders to commit a violent crime.<sup>102</sup> These facts should render the SGFS's fears unpersuasive. Its fear that campus carry will make students, faculty, and staff feel less safe is based on a fear and misunderstanding of firearms rather than on actual violence.<sup>103</sup>

SGFS also believes that students may use firearms to change their grades or silence their peers, but this belief is also based on a fear and misunderstanding of firearms. First, universities that currently grant some degree of campus carry have not documented an increase in CCF permit holders brandishing or threatening to use firearms to intimidate students or faculty members.<sup>104</sup> Second, this kind of violent act would result in the immediate suspension of the individual's CCF permit.<sup>105</sup> Third, if convicted of this violent act, the individu-

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<sup>102</sup> *Id.*; see also David B. Kopel, *Pretend "Gun-Free" School Zones: A Deadly Legal Fiction*, 42 CONN. L. REV. 515, 564–72 (2009) (discussing the low rate of violent crime by CCF permit holders). Since 2007, CCF permit holders have unlawfully killed 722 people (there are no statistics on the number of justifiable killings by CCF permit holders). This number includes 218 suicides and some murders in states where it was once permissible to CCF without a permit. These individuals did not undergo a background investigation or submit to a renewal process. This number also includes mass shootings where a small number of individuals committed a disproportionate number of deaths (136). See *Concealed Carry Killers*, *supra* note 81 (must view individual reports for more detailed data on where and how deaths occurred). While any death is unfortunate, these numbers suggests that the approximately 9.5 million CCF permit holders in the United States are still substantially less likely to commit acts of violence than the general population. See *Concealed Carry State Statistics*, LEGALLY ARMED (updated Feb. 7, 2015), [http://legallyarmed.com/ccw\\_statistics.htm](http://legallyarmed.com/ccw_statistics.htm) (listing the number of CCF permits per state); *United States Crime Rates 1960–2012*, DISASTER CENTER, <http://www.disastercenter.com/crime/uscrime.htm> (last visited Feb. 7, 2015) (a total of 107,265 murders have occurred in the United States from 2007 to 2013); see also *Assembly Judiciary Hearing on S.B. 231*, *supra* note 1, at 27 (testimony of Chuck Callaway, Police Dir., Office of Intergov. Servs., Las Vegas Metro. Police Dep't [hereinafter *LVMPD Testimony*]) (“[T]he majority of [CCF] permit holders that we encounter are good and honest citizens. They let us know they are armed when encountered, and make every attempt to do things the right way.”).

<sup>103</sup> For example, the rate of “accidental discharges” is very low because modern firearms are designed with multiple safety features and the trigger should not be exposed when concealed. While “negligent discharges” do occur as a result of mishandling a firearm, less than 2 percent of all firearm-related deaths occur from such accidents. *Common Arguments Against Campus Carry*, *supra* note 92. One author still believes that while rushing to class, a firearm could easily fall from a bag, discharge, and strike another individual. Lewis, *supra* note 59, at 24. What this author fails to mention when supporting this belief is that the firearm that accidentally discharged was a .38 caliber derringer, likely with no trigger guard, dropped by a man who had forgotten it was loose in his coat pocket. See KHOU Staff, *Man Who Accidently Shot Woman in Restaurant: I'm Totally Distraught*, KHOU (Jan. 25, 2011, 9:50 PM), <http://www.khou.com/story/local/2014/11/11/11430190/>. Firearms instructors would never advocate carrying a concealed firearm in this way, and modern holsters are tightened to prevent slippage and designed to safely protect the trigger from negligent discharges.

<sup>104</sup> *Common Arguments Against Campus Carry*, *supra* note 92. (CCF permit holders also carry in office buildings, grocery stores, shopping malls, restaurants, and churches without committing acts of violence).

<sup>105</sup> See NEV. REV. STAT. § 202.3657(6) (2013) (“If the sheriff receives notification . . . that a permittee . . . has been charged with a crime involving the use or threatened use of force or

al is barred from ever carrying a concealed firearm in the future.<sup>106</sup> Finally, if professors were truly concerned about this kind of reckless behavior, allowing professors to carry concealed firearms on campus could be empowering.<sup>107</sup> Nothing currently stops a dangerous individual from carrying an illegal firearm onto a college campus.<sup>108</sup>

Programs to identify at-risk individuals and background checks can coexist with campus carry, but the effectiveness of these programs is questionable.<sup>109</sup> An individual typically demonstrates warning signs before committing a violent act,<sup>110</sup> but strategies to identify these warning signs can be inaccurate.<sup>111</sup>

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violence . . . the sheriff shall suspend the person's permit . . ."). When the police arrest an individual, they can immediately ascertain whether the individual has obtained a CCF permit and suspend it.

<sup>106</sup> See *id.* § 202.3657(4)(e)–(f) (after an individual's permit is suspended, any attempt to renew the permit will be denied for having committed a misdemeanor involving the use or threatened use of force or violence in the last three years or any felony).

<sup>107</sup> See *Common Arguments Against Campus Carry*, *supra* note 92. (“[S]ome professors might feel more comfortable about issuing bad grades if they knew they were allowed the means to defend themselves.”). A student that seeks to harm a professor will break the law to do so. See Cynthia R. Fagen, *Student Kills Prof*, N.Y. POST, Dec. 6, 2009, at 22 (student stabbed to death Binghamton University professor in office); Ryan Gabrielson, *Student Kills 3 Profs, Self*, ARIZ. DAILY WILDCAT, Oct. 29, 2002, available at [http://wc.arizona.edu/papers/96/46/01\\_1.html](http://wc.arizona.edu/papers/96/46/01_1.html) (Arizona nursing student killed three professors at school); Joel Currier, *Shooter at St. Louis Career College Used Gun with Serial Number Filed Off*, ST. LOUIS POST-DISPATCH (January 16, 2013, 1:30PM), [http://www.stltoday.com/news/local/metro/at-least-one-shot-in-st-louis-business-school-shooting/article\\_592649ae-d2ed-5627-a175-779dc8592ec0.html](http://www.stltoday.com/news/local/metro/at-least-one-shot-in-st-louis-business-school-shooting/article_592649ae-d2ed-5627-a175-779dc8592ec0.html) (student left campus and returned with an illegally obtained firearm to shoot a financial aid director); Jason Hanna et al., *Purdue Shooting Suspect Surrenders After Allegedly Killing Fellow Student*, CNN (Jan. 22, 2014, 9:47 AM), <http://www.cnn.com/2014/01/21/justice/purdue-shooting-report/> (teaching assistant brought firearm to campus to murder another teaching assistant).

<sup>108</sup> One solution to deter illegal firearm possession on college campuses may be to increase the penalties for crimes committed in “gun free” zones. See, e.g., IOWA CODE ANN. § 724.4A (West 2013) (creating double penalties for crimes committed on the property of elementary and secondary schools and public parks). However, tragedies such as Virginia Tech, Sandy Hook, and Columbine High School demonstrate how this legislative remedy may have no effect at deterring the most violent criminals. These individuals generally take their own lives after purposefully violating “gun free” zones. See e.g., Christina Cocca & Samia Khan, “*Mass Murder*” Rampage Near UC Santa Barbara, NBC4 NEWS, <http://www.nbctv.com/news/local/shooting-isla-vista-uc-santa-barbara-260505021.html> (May 25, 2014, 9:39 AM) (gunman Eliot Oliver Robertson Rodger died of self-inflicted gunshot wound to the head after he engages in gunfire with police); Colleen Curry, *UCF Gunman's To-Do List Ended With 'Give 'Em Hell'*, ABC NEWS (March 19, 2013), <http://abcnews.go.com/US/ucf-gunmans-list-ended-give-em-hell/story?id=18762704> (gunman died of a self-inflicted gunshot wound to the head after the police thwart his plan to commit a mass murder).

<sup>109</sup> See *Common Arguments Against Campus Carry*, *supra* note 92; see also Yesenia Amaro, *Nevada Looks to Gun Stores for Help in Suicide Prevention*, LAS VEGAS REV.-J., Jan. 10, 2014, at A1 (discussing the preventative strategies that gun stores in Nevada are beginning to engage in to reduce the number of suicides by firearm).

<sup>110</sup> See *Common Arguments Against Campus Carry*, *supra* note 92 (discussing how previously sane, well-adjusted people do not typically “snap,” and acts of violence are typically

Some at-risk individuals do not always demonstrate these signs.<sup>112</sup> Background checks might also prevent some acts of violence on college campuses,<sup>113</sup> but background checks for all students, faculty, and staff raise significant privacy concerns.<sup>114</sup> Mental health issues may even go unreported and other records may slip through the cracks.<sup>115</sup> Preventative strategies could provide an additional layer of campus safety, but they may fail to predict and deter violent acts and pose privacy concerns.

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precipitated by some kind of traumatic event and a downward spiral toward violence); see also Cocca & Khan, *supra* note 108 (the Santa Barbara gunman posted a YouTube video and 140 page manifesto online about his plans to “exact revenge on the world in a devastating attack”); Larry Elder, *Do “Gun-Free” Zones Encourage School Shootings?*, CREATORS.COM, <http://www.creators.com/opinion/larry-elder/do-gun-free-zones-encourage-school-shootings.html> (Oct. 18, 2007) (a Cleveland student’s past included violent confrontations, mental health problems, and one suspension before opening fire on his high school); Zach Noble, *Extreme Caution: This Frightening YouTube Video May Be the Manifesto of Santa Barbara Mass Slayer*, BLAZE (May 27, 2014, 9:07 AM), <http://www.theblaze.com/stories/2014/05/24/extreme-caution-this-frightening-youtube-video-may-be-the-manifesto-of-santa-barbara-mass-slayer/> (the Santa Barbara gunman’s YouTube video); Mikael Thalen, *Media Works to Keep Mass Shooters’ Profiles Secret*, INFOWARS.COM (Dec. 15, 2013), <http://www.infowars.com/media-works-to-keep-mass-shooters-profiles-secret/> (many of the most recent mass shooters had extensive mental health issues and an obsession with violence).

<sup>111</sup> Not even the Transportation Security Administration can demonstrate that its “behavior detection officers” and costly Screening Passengers by Observation Technique can reliably identify dangerous individuals accurately. See U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-14-159, AVIATION SECURITY: TSA SHOULD LIMIT FUTURE FUNDING FOR BEHAVIOR DETECTION ACTIVITIES 23 (2013), available at <http://www.gao.gov/assets/660/658923.pdf>; see also Benedict Carey, *Broader Approach Urged to Reduce Gun Violence*, N.Y. TIMES, Dec. 12, 2013, at A24 (discussing a American Psychological Association report on the failures of preventative strategies to identify suicides and homicides); Assoc. Press et al., *Santa Barbara Police Face Internal Investigation*, DAILY MAIL (May 25, 2014, 4:11 PM), <http://www.dailymail.co.uk/news/article-2638533/Police-THREE-contacts-Elliot-Rodger-Isla-Vista-shooting.html> (discussing the numerous warning signs of the Santa Barbara but how the police did not arrest him because he was a “perfectly polite, kind and wonderful human”).

<sup>112</sup> See, e.g., *Man With Death Wish Shot Inside Vernon Hills Police Station*, CBS CHI. (Apr. 3, 2013, 5:41 AM), <http://chicago.cbslocal.com/2013/04/03/man-shot-inside-vernon-hills-police-station/> [hereinafter *Vernon Hills Shooting*] (man opens fire in police station to commit “suicide by cop” because “I am dying from cancer and couldn’t do the deed myself.”).

<sup>113</sup> See *supra* note 85 (discussing how criminal background checks may have prevented the tragedies at Virginia Tech and the University of Alabama).

<sup>114</sup> See LaPoint, *supra* note 79, at 20 (explaining that the Federal Education Rights and Privacy Act (FERPA) and Health Insurance Portability and Accountability Act (HIPPA) protect the privacy of a student’s education and health records and requesting permission to obtain this information before admission could lead to discrimination based on disability); see also Lichtenstein, *supra* note 85, at 458 (“A few objections against such background checks include privacy concerns, negligence in checking, flawed or incorrect data and discrimination in the form of profiling those with negative background checks.”).

<sup>115</sup> See Joe Johns & Stacey Samuel, *Would Background Checks Have Stopped Recent Mass Shootings? Probably Not*, CNN (Apr. 10, 2013, 6:07 PM), <http://www.cnn.com/2013/04/10/politics/background-checks-mass-shootings/> (discussing how states are now engaging in a variety of legislative efforts to prevent such mistakes).

Not walking alone at night, situational awareness, and requesting a campus escort could also coexist with campus carry, but sole reliance on these more “commonsensical” methods may also be unwise. They each have their limitations.<sup>116</sup> Opponents even insist that other means of self-defense, not firearms, are the answer. However, the elderly and disabled may be unable to manually disarm an attacker<sup>117</sup> and less lethal forms of self-defense, such as Tasers and defense sprays, have limited or no use during certain encounters.<sup>118</sup>

Proponents instead advocate that each individual should determine an appropriate form of self-defense, and that “gun free” zones dangerously disarm law-abiding citizens who could otherwise protect themselves from imminent bodily injury or death.<sup>119</sup> CCF permit holders are less violent, reckless, and likely to use their firearms to intimidate other individuals.<sup>120</sup> There is “no pragmatic basis” for prohibiting campus carry.<sup>121</sup> Millions of trained and licensed adults currently carry in office buildings, movie theaters, grocery stores, shopping malls, and restaurants every day without committing acts of violence.<sup>122</sup>

#### IV. CURRENT CAMPUS CARRY LAWS THROUGHOUT THE UNITED STATES

In 1995, Blue Ridge Community College in Virginia became the first university to grant full permission to campus carry.<sup>123</sup> Any CCF permit holder could carry anywhere on campus.<sup>124</sup> Campus carry now exists in many states, and these states currently permit (a) full permission to campus carry, (b) some degree of partial permission, or (c) “vehicular permission”.

Most states still prohibit campus carry or permit universities to draft their own policies to regulate the carrying of concealed firearms.<sup>125</sup> When universities draft their own policies, this typically leads to the prohibition of campus

<sup>116</sup> See *supra* notes 1–8 and accompanying text (testimony of Amanda Collins about walking with as a group and her use of situational awareness); see also *Collins Exhibit, supra* note 1, at 2 (testimony of Amanda Collins about how the call box near the surprise attack of James Biela would not have helped her); *Senate Gov’t Affairs Hearing on S.B. 231, supra* note 17, at 15 (testimony of Amanda Brownlee) (student testimony about the long waits for a campus escorts and the dangers of waiting for the escort to arrive).

<sup>117</sup> *Common Arguments Against Campus Carry, supra* note 92.

<sup>118</sup> For example, Tasers have limited use against multiple attackers or if the attacker is wearing thick clothing or standing too far away. Defense sprays can be clumsy and suffer from similar limitations as Tasers. Defense sprays, like firearms, are even prohibited on most college campuses. *Id.*

<sup>119</sup> See *About the SCC, supra* note 95.

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> *Guns on Campus: Campus Action*, NAT’L CONF. ST. LEGISLATURES (March 2012), <http://www.ncsl.org/research/education/guns-on-campus-campus-action.aspx>.

<sup>124</sup> *Id.*

<sup>125</sup> *Guns on Campus: Overview*, NAT’L CONF. ST. LEGISLATURES (Mar. 7, 2014), <http://www.ncsl.org/research/education/guns-on-campus-overview.aspx>.

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carry.<sup>126</sup> After the State of Utah granted full permission to campus carry in 2006, legislative debate to challenge this prohibition increased substantially.<sup>127</sup> The State of Colorado joined a growing list of states to grant some degree of campus carry in 2012, and more than nineteen states discussed campus carry the following year.<sup>128</sup> The State of Idaho recently granted full permission to campus carry in 2014, and legislative debate to grant some degree of campus carry in other states will continue in the coming years.<sup>129</sup>

*A. The Utah Model: Full Permission to Campus Carry*

The State of Utah has permitted campus carry anywhere on college campuses since 2006—classrooms, dorms, and dining facilities included.<sup>130</sup> The Utah Legislature strictly forbids universities from prohibiting campus carry, and Utah was the only state to grant such liberal permission until 2014.<sup>131</sup> Idaho now grants a similar degree of permission but requires that individuals first obtain an “enhanced” permit before carrying on college campuses.<sup>132</sup>

In 2012, the Colorado Supreme Court held that Colorado’s Concealed Carry Act (“CCA”) forbids universities from prohibiting campus carry.<sup>133</sup> Only the Legislature may make this decision.<sup>134</sup> While the CCA is unclear on whether Colorado universities must grant full or partial permission, they must grant

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<sup>126</sup> See *Guns on Campus’ Laws for Public Colleges and Universities*, ARMED CAMPUSES, <http://www.armedcampuses.org/> (last visited Nov. 30, 2014) (an interactive map illustrating that most universities that draft their own firearms policies overwhelmingly prohibit campus carry).

<sup>127</sup> See Pamela Manson & Sheena McFarland, *Court Shoots Down U. Gun Ban*, SALT LAKE TRIB. (Sept. 9, 2006, 1:11 AM), [http://www.sltrib.com/ci\\_4311399](http://www.sltrib.com/ci_4311399) (discussing the history of campus carry at the University of Utah and subsequent litigation with the Attorney General). See generally *Univ. of Utah v. Shurtleff*, 144 P.3d 1109 (Utah 2006).

<sup>128</sup> *Guns on Campus: Overview*, *supra* note 125.

<sup>129</sup> *Id.*

<sup>130</sup> See *Weapons on Campus*, U. UTAH DEP’T PUB. SAFETY, <http://dps.utah.edu/laws-policies/weapons.php> (last visited Nov. 30, 2014); see also Riley C. Massey, Comment, *Bull’s-Eye: How the 81st Texas Legislature Nearly Got it Right on Campus Carry, and the 82nd Should Still Hit the X-Ring*, 17 TEX. WESLEYAN L. REV. 199, 216–17 (2011) (for legislative and judicial history that led to the State of Utah’s decision to permit students full permission to campus carry).

<sup>131</sup> See UTAH CODE ANN. § 53B-3-103(2) (West 2004) (providing the Utah Legislature with sole authority to regulate firearms at institutions of higher education and permitting the lawful carrying of firearms at these institutions).

<sup>132</sup> Obtaining an “enhanced” permit in Idaho requires an additional six-hour class and a more extensive live fire qualification. *Laws Concerning Carrying Concealed Firearms on Campus in Idaho*, ARMED CAMPUSES, <http://www.armedcampuses.org/idaho/> (last visited Nov. 30, 2014).

<sup>133</sup> See *Regents of the Univ. of Colo. v. Students for Concealed Carry on Campus, LLC*, 271 P.3d 496, 497 (Colo. 2012).

<sup>134</sup> See *id.*

some degree of campus carry.<sup>135</sup> Any CCF permit holder may now campus carry, but some universities continue to prohibit the carrying of firearms in dorms and dining facilities.<sup>136</sup>

*B. The Oregon Model: Partial Permission to Campus Carry*

Whether the State of Colorado grants full or partial permission is uncertain, but the State of Oregon clearly grants one degree of partial permission. When the Western Oregon University suspended a student in 2009 for carrying a concealed firearm on campus, the student sued the university.<sup>137</sup> The student possessed a CCF permit, and the Oregon Court of Appeals determined that the Oregon University System had “exceed[ed] its authority” by prohibiting campus carry entirely.<sup>138</sup> The Oregon State Board of Higher Education later voted in 2012 to only prohibit campus carry in classrooms and dorms.

This degree of campus carry is a compromise that strikes a balance between the fundamental right to keep and bear arms for self-defense and university interests.<sup>139</sup> Any CCF permit holder may now campus carry in Oregon, but this individual may not enter campus buildings.<sup>140</sup> A similar degree of partial permission also exists in Wisconsin and Mississippi.<sup>141</sup>

The State of Michigan also grants some degree of partial permission, but like Colorado, this permission appears university dependent. In Michigan, a CCF permit holder may not carry in any classroom or dorm.<sup>142</sup> Whether the in-

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<sup>135</sup> See *Laws Concerning Carrying Concealed Firearms on Campus in Colorado*, ARMED CAMPUSES, <http://www.armedcampuses.org/colorado/> (last visited Nov. 30, 2014).

<sup>136</sup> See, e.g., *Weapons & Explosives*, COLO. ST. U. RESIDENCE HALL POLICIES, <http://reshallpolicies.colostate.edu/weapons-explosives> (last visited Nov. 30, 2014) (prohibiting campus carry in dorms and dining facilities but providing a community lockup at campus police services); *Weapons on Campus*, U. COLO. BOULDER POLICE DEP'T, <http://police.colorado.edu/services/weapons-campus> (last visited Nov. 30, 2014) (prohibiting campus carry in dorms but providing a community lockup at campus police services).

<sup>137</sup> Bill Graves, *Licensed Guns Legal on Oregon Campuses*, OREGONIAN, Sept. 29, 2011.

<sup>138</sup> *Id.*; *Or. Firearms Educ. Found. v. Bd. of Higher Educ.*, 264 P.3d 160, 161 (Or. Ct. App. 2011).

<sup>139</sup> See Bill Graves, *Higher Education Board Moves to Ban Guns on University Campuses*, OREGONIAN, Mar. 2, 2012 (discussing policies concerning where one may conceal carry on campus). How a state may regulate campus carry remains uncertain after *McDonald*. The firearms regulation must be “reasonable” and strike a balance between the fundamental right to keep and bear arms for self-defense and university interests. See *supra* note 59 and accompanying text.

<sup>140</sup> Graves, *supra* note 139.

<sup>141</sup> *Laws Concerning Carrying Concealed Firearms on Campus in Wisconsin*, ARMED CAMPUSES, <http://www.armedcampuses.org/wisconsin/> (last visited Nov. 30, 2014) [hereinafter *Wisconsin Campus Carry Laws*]; *Laws Concerning Carrying Concealed Firearms on Campus in Mississippi*, ARMED CAMPUSES, <http://www.armedcampuses.org/mississippi/> (last visited Nov. 30, 2014) [hereinafter *Mississippi Campus Carry Laws*].

<sup>142</sup> See MICH. COMP. LAWS ANN. § 28.425o(1)(h) (West 2012) (the law does not permit the carrying of concealed firearms on college property but appears to leave this to the university's discretion).

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dividual may campus carry elsewhere appears to depend on the university.<sup>143</sup> Michigan State University (“MSU”) voted in 2009 to permit CCF permit holders to campus carry, excluding campus buildings.<sup>144</sup> The University of Michigan does not grant this degree of partial permission.<sup>145</sup> Like other states that permit universities to draft their own policies to regulate the carrying of concealed firearms, universities in Michigan tend to prohibit campus carry.<sup>146</sup> Nonetheless, partial permission does exist at MSU.

### C. *The Texas Model: Permission to Carry & Store Firearms in Vehicles*

Several state legislatures and one state court have established another degree of campus carry: “vehicular permission.” While a CCF permit holder may not carry on campus, this individual may still carry and store a firearm in a vehicle on campus. Like degrees of partial permission, “vehicular permission” appears to balance the fundamental right to keep and bear arms for self-defense with university interests.<sup>147</sup> If state legislatures and universities continue to oppose other degrees of permission to campus carry, “vehicular permission” may be an acceptable compromise for some proponents in future legislative sessions.<sup>148</sup>

The Texas Legislature reached this compromise in 2013. Any CCF permit holder may now carry or store a firearm while driving or parked on a college campus in Texas.<sup>149</sup> Similar permission also exists in Georgia,<sup>150</sup> Illinois,<sup>151</sup>

<sup>143</sup> *Id.*

<sup>144</sup> Brittany Shammass, *MSU Allows People to Carry Concealed Firearms on Campus*, ST. NEWS (June 21, 2009, 11:41 PM), [http://statenews.com/index.php/article/2009/06/msu\\_allows\\_people\\_to\\_carry\\_concealed\\_firearms\\_on\\_campus](http://statenews.com/index.php/article/2009/06/msu_allows_people_to_carry_concealed_firearms_on_campus).

<sup>145</sup> *Id.*

<sup>146</sup> *Laws Concerning Carrying Concealed Firearms on Campus in Michigan*, ARMED CAMPUSES, <http://www.armedcampuses.org/michigan/> (last visited Nov. 30, 2014).

<sup>147</sup> As discussed previously, how a state may regulate campus carry remains uncertain after *McDonald*. The firearms regulation must be “reasonable” and strike a balance between the fundamental right to keep and bear arms for self-defense and university interests. *See supra* note 59 and accompanying text.

<sup>148</sup> If proponents are, of course, willing to compromise by focusing on the dangers that exist off campus and concede the university’s need to maintain campus safety with reasonable firearms regulations. *See infra* Part VI.B–C. This compromise is still very contingent on the ability of proponents to successfully challenge the assertions that CCF permit holders are dangerous and that campus carry will increase suicides, violence, and accidental discharges on college campuses. *See infra* Part VI.A.

<sup>149</sup> *Laws Concerning Carrying Concealed Firearms on Campus in Texas*, ARMED CAMPUSES, <http://www.armedcampuses.org/texas/> (last visited Nov. 30, 2014) [hereinafter *Texas Campus Carry Laws*]; TEX. GOV’T CODE ANN. § 411.2032 (West 2013).

<sup>150</sup> GA. CODE ANN. § 16-11-127.1(c)(7) (West 2009).

<sup>151</sup> Blake Wood, *New Concealed-Carry Law Won’t Allow You to Carry a Gun on Campus*, NEWS @ ILL. SPRINGFIELD, Dec. 12, 2013, <http://news.uis.edu/2013/12/new-concealed-carry-law-wont-allow-you.html>.

Kentucky,<sup>152</sup> Minnesota,<sup>153</sup> Nebraska,<sup>154</sup> North Carolina,<sup>155</sup> Ohio,<sup>156</sup> Oklahoma,<sup>157</sup> South Carolina,<sup>158</sup> and Tennessee.<sup>159</sup> Some of these states require the firearm to remain in the vehicle at all times, or be secured in the glove compartment or trunk.<sup>160</sup> In Ohio, a CCF permit holder may even step from the vehicle while on campus to safely store or secure the firearm so long as the individual is “in the immediate process of placing the handgun in a locked motor vehicle.”<sup>161</sup> In Illinois, universities may even require that CCF permit holders park in designated spots.<sup>162</sup>

Designated parking spots and “vehicular permission” pose several problems. Opponents suggest that “vehicular permission” could lead to firearm related thefts on campus.<sup>163</sup> Not only has this degree of campus carry existed for many years without such criminality, the probability that a criminal would target one of the few locked vehicles with a concealed firearm is very low.<sup>164</sup> The

<sup>152</sup> KY. REV. STAT. ANN. § 237.115 (West 2014). Kentucky’s recognition of “vehicular permission” is the result of a recent Kentucky Supreme Court case that reconciled two state laws. *See Mitchell v. Univ. of Ky.*, 366 S.W.3d 895, 897–99 (Ky. 2012).

<sup>153</sup> MINN. STAT. ANN. § 624.714 subdiv. 18(c) (West 2009).

<sup>154</sup> NEB. REV. STAT. § 28-1204.04(1) (2014).

<sup>155</sup> N.C. GEN. STAT. ANN. § 14-269.2(k) (West 2014); Andrew Kasper, *New Law to Allow Concealed Weapons in Cars on Campus*, SMOKY MOUNTAIN NEWS (Aug. 14, 2013, 1:10 PM), <http://www.smokymountainnews.com/news/item/11512>.

<sup>156</sup> OHIO REV. CODE ANN. § 2923.126(B)(5) (West 2006).

<sup>157</sup> 2014 Okla. Sess. Law Serv. 325 § E (West).

<sup>158</sup> *Laws Concerning Carrying Concealed Firearms on Campus in South Carolina*, ARMED CAMPUSES, <http://www.armedcampuses.org/south-carolina/> (last visited Nov. 30, 2014); S.C. CODE ANN. § 16-23-420 (2013).

<sup>159</sup> TENN. CODE ANN. § 39-17-1309(c)(1) (West 2011) (but this permission only extends to nonstudents).

<sup>160</sup> 2014 Okla. Sess. Law Serv. 325 § E (West); S.C. CODE ANN. § 16-23-420.

<sup>161</sup> *See* OHIO REV. CODE ANN. § 2923.126(B)(5).

<sup>162</sup> *See* Wood, *supra* note 151 (“The law allows the university to designate specific parking lots for those with a concealed-carry permit, but [the University of Illinois Springfield] has decided not to implement such a policy.”).

<sup>163</sup> *See Nevada Universities List, Crime Maps, Local Statistics and Alerts*, UCRIME, <http://ucrime.com/nv> (last visited Nov. 30, 2014) [hereinafter *Nevada Universities Crime Maps*] (interactive maps of UNLV and UNR that identify the theft of items from cars); *see also Daily Crime Log*, UNIV. OF NEVADA, RENO, <http://www.unr.edu/police/data-center/daily-crime-log> (last visited Nov. 30, 2014) (for access to the monthly crime reports at UNR); *Crime Log*, UNIV. OF NEVADA, LAS VEGAS: POLICE SERVICES, <http://police.unlv.edu/policies/crime-log.html> (last visited Nov. 15, 2014) (for a crime log of all crimes that occurred at UNLV for the previous six months).

<sup>164</sup> In Nevada, there are eighty-one thousand CCF permit holders. *Concealed Carry State Statistics*, *supra* note 102. Of the nearly thirty-three thousand students and staff at UNLV, only a fraction of these individuals would likely benefit from “vehicular permission.” *Facts and Stats*, UNIV. OF NEVADA, LAS VEGAS, <http://www.unlv.edu/about/glance/facts> (last visited Feb. 9, 2015). In Nevada, an individual must have reached the age of 21 to carry a concealed firearm. NEV. REV. STAT. § 202.3657(3)(a) (2013). At UNR, there are approximately nineteen thousand students and faculty. *History, Stats & Highlights*, UNIV. OF NEVADA, RENO, <http://www.unr.edu/about/university-history> (last visited Feb. 9, 2015).

purpose of a “concealed” firearm is to remain undetected. Not only do designated parking spots disregard this purpose, but this act could also lead to discriminatory practices by the university.

*D. The Nevada Model: No Permission to Campus Carry*

The State of Nevada requires a CCF permit holder to first request written permission from the “president of a branch or facility of the Nevada System of Higher Education” before carrying a concealed firearm on a college campus.<sup>165</sup> NSHE routinely denies all campus carry requests.<sup>166</sup> The Board of Regents now requires an applicant to demonstrate “a specific risk of attack presented by an actual threat,” “a general risk of attack presented by the nature of the individual’s current or former profession,” or “a legitimate educational or business purpose.”<sup>167</sup> NSHE will grant permission to bring a firearm to campus for short periods of time and under limited circumstances, but this narrow firearms policy essentially renders Nevada a “no permission to campus carry” state.<sup>168</sup> Nevada does not recognize “vehicular permission.”

States prohibit campus carry by statute or by permitting universities to draft their own policies to regulate the carrying of concealed firearms.<sup>169</sup> When universities draft their own policies, this typically leads to the prohibition of campus carry entirely.<sup>170</sup> That said, proponents have successfully challenged these statutes throughout the United States.<sup>171</sup> State legislatures have begun to acknowledge the fundamental right to keep and bear arms for self-defense and grant some degree of campus carry in Mississippi,<sup>172</sup> North Carolina,<sup>173</sup> Tex-

<sup>165</sup> See NEV. REV. STAT. §§ 202.265(3)(a)(3), 202.3673(3)(a).

<sup>166</sup> See *supra* notes 17, 19 (discussing how NSHE denies nearly all requests but permitted Amanda Collins to carry a firearm at UNR after the rape if she promised to keep it a secret).

<sup>167</sup> See NEV. SYS. OF HIGHER EDUC., *supra* note 18.

<sup>168</sup> See *supra* note 19 (discussing the six individuals that NSHE granted permission in 2011 and 2012).

<sup>169</sup> See, e.g., FLA. STAT. ANN. § 790.06(12) (West Supp. 2014); MASS. GEN. LAWS ANN. ch. 269, § 10(j) (West 2006); N.J. STAT. ANN. § 2C:39-5(e)(1) (West Supp. 2014); N.M. STAT. ANN. § 30-7-2.4 (West 2014); N.Y. PENAL LAW § 265.01-a (McKinney 2013); WYO. STAT. ANN. § 6-8-104(t) (West Supp. 2014).

<sup>170</sup> See *Guns on Campus’ Laws for Public Colleges and Universities*, *supra* note 126 (an interactive map illustrating that most universities that draft their own firearms policies overwhelmingly prohibit campus carry).

<sup>171</sup> More than nineteen states discussed some degree of campus carry in 2013. *Guns on Campus: Overview*, *supra* note 125. There were only a dozen attempts in 2009, and the number of challenges continues to rise each year. See LaPoint, *supra* note 79, at 18. Before 2009, only about twelve universities throughout the United States granted some degree of campus carry. *Id.* at 16. Now, over a dozen states grant some degree of campus carry. See *supra* Part IV.A–C.

<sup>172</sup> See *Mississippi Campus Carry Laws*, *supra* 141 (since 2011).

<sup>173</sup> See Kasper, *supra* note 155 (since 2013).

as,<sup>174</sup> and Wisconsin.<sup>175</sup> If unsuccessful in the legislature, proponents have successfully challenged this prohibition in the courts. State courts have held that universities must grant some degree of campus carry in Colorado,<sup>176</sup> Kentucky,<sup>177</sup> Oregon,<sup>178</sup> and Utah.<sup>179</sup> If this trend continues, opponents may prefer to reach a legislative compromise to avoid costly litigation and to protect university interests.<sup>180</sup>

#### V. THE NEVADA LEGISLATURE'S PRIOR ATTEMPTS TO GRANT CAMPUS CARRY

During the 76th and 77th Regular Sessions, the Nevada Legislature attempted to amend the laws that currently prohibit campus carry without first requesting written permission from NSHE.<sup>181</sup> The bicameral Nevada Legislature meets biennially, during odd-numbered years, and will reconvene for its 78th Regular Session in 2015 on the first Monday in February.<sup>182</sup> Following a constitutional amendment that limited session length, the Legislature must adjourn within 120 consecutive calendar days.<sup>183</sup> Between regular sessions, legislators engage in interim sessions, committee work, and research.<sup>184</sup>

Nevada's part-time legislature consists of Assembly members, elected every two years, and Senators, elected every four years, who may serve for a maximum of twelve years in either house.<sup>185</sup> Unlike a state legislature that may convene more frequently and impede non-legislative employment, the "citizen Legislature" of Nevada is everyday Nevadans with occupations in addition to

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<sup>174</sup> See *Texas Campus Carry Laws*, *supra* note 149 (since 2013); TEX. GOV'T CODE ANN. § 411.2032 (West 2013).

<sup>175</sup> See *Wisconsin Campus Carry Laws*, *supra* note 141 (since 2011); WIS. STAT. ANN. § 948.605(2)(b)(1r) (West Supp. B 2014).

<sup>176</sup> See *Regents of the Univ. of Colo. v. Students for Concealed Carry on Campus, LLC*, 271 P.3d 496, 497 (Colo. 2012).

<sup>177</sup> See *Mitchell v. Univ. of Ky.*, 366 S.W.3d 895, 897, 899–903 (Ky. 2012).

<sup>178</sup> See *Or. Firearms Educ. Found. v. Bd. of Higher Educ.*, 264 P.3d 160, 161 (Or. Ct. App. 2011).

<sup>179</sup> See *Univ. of Utah v. Shurtleff*, 144 P.3d 1109, 1111, 1122 (Utah 2006).

<sup>180</sup> How the courts will interpret *Heller* and *McDonald* at the state level to determine what firearms regulations are "reasonable" is uncertain. This area of law is unresolved. Opponents and proponents may instead prefer to reach a legislative compromise to grant some degree of campus carry but protect university interests. See *infra* Part VI.C.

<sup>181</sup> NEV. REV. STAT. §§ 202.265(3)(a)(3), 202.3673(3)(a) (2013).

<sup>182</sup> See NEV. CONST. art. IV, § 2, cl. 1 (the Nevada Legislature meets for a regular session only once every two years on the first Monday in February).

<sup>183</sup> See NEV. CONST. art. IV, § 2, cl. 2.

<sup>184</sup> See *Session Information*, NEV. LEGISLATURE, <http://leg.state.nv.us/Session/> (last visited Nov. 30, 2014) (for the length of regular and special sessions); *Facts About the Nevada Legislature*, NEV. LEGISLATURE, [https://www.leg.state.nv.us/General/AboutLeg/General\\_Short.cfm](https://www.leg.state.nv.us/General/AboutLeg/General_Short.cfm) (Feb. 5, 2013) (for a short list of representational duties between sessions).

<sup>185</sup> See NEV. CONST. art. IV, §§ 3–4.

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their duties as elected representatives.<sup>186</sup> Due to this part-time status and the narrow opportunity to pass legislation every two years, every Regular Session of the Nevada Legislature is vital.<sup>187</sup> The Legislature currently plans to revisit campus carry during its 78th Regular Session in 2015.<sup>188</sup> Proponents will look to Nevada to join the list of states to grant some degree of campus carry because of the State's pro-gun attitude and prior attempts to amend current laws.

#### A. *The 76th Regular Session of the Nevada Legislature*

On March 9, 2011, Senator John Lee<sup>189</sup> introduced Senate Bill 231 ("S.B. 231") to amend the laws that currently prohibit campus carry without first requesting written permission from NSHE.<sup>190</sup> Senator Lee and other sponsors of S.B. 231<sup>191</sup> were aware of NSHE's current policy to deny all campus carry requests.<sup>192</sup> Mirroring the State of Utah's approach to campus carry,<sup>193</sup> the Neva-

<sup>186</sup> See Anjeanette Damon, *Where Do Nevada's Legislators Rank Nationally in Salary? The Answer May Surprise You*, LAS VEGAS SUN (Feb. 27, 2013, 2:00 AM), <http://www.lasvegassun.com/news/2013/feb/27/where-do-nevadas-legislators-rank-nationally-salar/>.

Some Assembly members and Senators are doctors, teachers, attorneys, professors, ministers, or work in casino management or food and beverage. See *77th (2013) Session Legislator Information*, NEV. LEGISLATURE, <http://leg.state.nv.us/Session/77th2013/legislators/> (last visited Nov. 30, 2014).

<sup>187</sup> This is one of the narrowest opportunities to pass legislation in the United States. Only a few states, including Arkansas, Florida, Kansas, New Mexico, North Dakota, Utah, and West Virginia, have legislative calendars that run shorter than Nevada. See *Legislative Session Length*, NAT'L CONF. ST. LEGISLATURES, <http://www.ncsl.org/research/about-state-legislatures/legislative-session-length.aspx> (last visited Nov. 30, 2014).

<sup>188</sup> See *AB2 Overview*, NEV. ELECTRONIC LEGIS. INFO. SYSTEM, <https://www.leg.state.nv.us/App/NELIS/REL/78th2015/Bill/1148/Overview> (last visited Feb. 8, 2015). The Assembly Judiciary Committee recently heard A.B. 2, a "vehicular permission" bill, during the 78th Regular Session (2015). The bill's primary sponsor, Speaker John Hambrick, sponsored a similar bill in 2013. See *infra* footnote 223 and accompany text. Assemblywoman Michele Fiore also plans to introduce a campus carry bill during the 78th Regular Session. Paul Nelson, *Gun Bill Heard at Nevada Legislature*, KTVN-TV (Feb. 4, 2015, 6:04 PM), <http://www.ktvn.com/story/28027986/gun-bill-heard-at-nevada-legislature>.

<sup>189</sup> *Legislative Biography—2011 Session: John J. Lee*, NEV. LEGISLATURE, <http://www.leg.state.nv.us/Session/76th2011/Legislators/Senators/Lee.pdf> (last visited Nov. 30, 2014).

<sup>190</sup> S. 231, 2011 Leg., 76th Sess. (Nev. 2011); see also Spillman, *supra* note 17 (briefly discussing S.B. 231's introduction and debate in the Senate Committee on Government Affairs).

<sup>191</sup> Senators John Lee, James Settelmeyer, Joe Hardy, Mark Manendo, and Mo Denis joined Assemblymen Elliot Anderson, Pat Hickey, John Hambrick, Richard Carrillo, and Ira Hansen as Primary Sponsors for S.B. 231. *SB231 Overview*, NEV. ELECTRONIC LEGIS. INFO. SYSTEM, <https://nelis.leg.state.nv.us/76th2011/App#/76th2011/Bill/Overview/SB231> (last visited Nov. 30, 2014). Senators Barbara Cegavske, Allison Copening, Donald Gustavson, Elizabeth Halseth, and Michael Roberson joined Assemblymen Richard Daly, Edwin Goedhart, Pete Goicoechea, Scott Hammond, Randy Kirner, Kelly Kite, Pete Livermore, and James Ohrenschall and Assemblywomen Lucy Flores as Co-Sponsors. *Id.*

<sup>192</sup> See *Senate Gov't Affairs Hearing on S.B. 231*, *supra* note 17, at 9, 16, 25, 33, 35.

<sup>193</sup> See *id.* at 4. (Utah was the only state to grant full permission to campus carry in 2010).

da Legislature sought to grant any CCF permit holder in the State of Nevada full permission to campus carry—classrooms, dorms, and dining facilities included.<sup>194</sup> S.B. 231 continued to prohibit campus carry at any “sporting venue with a seating capacity of 1,000 or more.”<sup>195</sup> In the Senate Committee on Government Affairs on March 18, 2011, S.B. 231 faced significant resistance from the Las Vegas Metropolitan Police Department,<sup>196</sup> campus police services,<sup>197</sup> special interest groups,<sup>198</sup> and Senator Michael Schneider.<sup>199</sup> S.B. 231 proceeded to the Senate floor two months later<sup>200</sup> and passed with a 15-6 constitutional majority on May 28.<sup>201</sup> With only a week left during the 76th Regular Session, S.B. 231 quickly moved to the Assembly.<sup>202</sup>

<sup>194</sup> S.B. 231 did not initially prohibit campus carry in any NSHE building or facility. *See Nev. S. 231 § 4*. During the hearing of the Assembly Committee on Judiciary for S.B. 231, Senator Lee proposed an amendment to prohibit the carrying of concealed firearms in dorms. *See infra* note 204 and accompanying text.

<sup>195</sup> S.B. 231’s use of the word “sporting venue” concerned one UNLV employee because “sporting venue” might not include the UNLV Performing Arts Center and other “non-sporting venues” that seat more than one thousand people. *See Assembly Judiciary Hearing on S.B. 231, supra* note 1 exhibit L (letter from Shaun Franklin-Sewell, UNLV Performing Arts Ctr.). This UNLV employee recommended that S.B. 231 substitute “sporting venue with a seating capacity of 1,000 or more” for “public assembly venue with a seating capacity of 1,000 or more” to include all large events on campus. *Id.* Although, if opponents are concerned about the consumption of alcohol and concealed firearms at “sporting venues,” then a prohibition of concealed firearms at “non-sporting venues” where alcohol is not served may be unnecessary. *See infra* text accompanying notes 231–32 (discussing the “Animal House” myth and fear of drunk and disorderly students carrying concealed firearms at sporting events).

<sup>196</sup> *See LVMPD Testimony, supra* note 102, at 27–28.

<sup>197</sup> *See UNR Chief of Police Testimony, supra* note 77, at 23; *UNLV Chief of Police Testimony, supra* note 17, at 31.

<sup>198</sup> *See Senate Gov’t Affairs Hearing on S.B. 231, supra* note 17 exhibit F (statement from the Nevada Faculty Alliance in opposition to S.B. 231); *Senate Gov’t Affairs Hearing on S.B. 231, supra* note 17 unmarked exhibit (position paper by Peace Officers Research Ass’n of Nev., in partial support and partial opposition to S.B. 231), *available at* <https://nelis.leg.state.nv.us/76th2011/App#/76th2011/Bill/Meetings/SB231> (follow hyperlink to “Ron Dreher”).

<sup>199</sup> *Legislative Biography—2011 Session: Michael (Mike) A. Schneider*, NEV. LEGISLATURE, <http://www.leg.state.nv.us/Session/76th2011/Legislators/Senators/Schneider.pdf> (last visited Nov. 30, 2014). *See Senate Gov’t Affairs Hearing on S.B. 231, supra* note 17, at 19, 30, 38.

<sup>200</sup> After the Senate Committee on Government Affairs hearing, S.B. 231 took two months to reach the Senate floor because NSHE used a procedural move to defeat S.B. 231 in the Senate Committee on Finance. *See Legislative Deadlines Weed Out Gun Bills in Nevada*, NRA-ILA, May 24, 2011, <http://www.nra.org/hunting/issues-and-alerts/2011/5/legislative-deadlines-weed-out-gun-bill.aspx>; *see also* S. 231, 2011 Leg., 76th Sess. (Nev. 2011) (S.B. 231 did not have a fiscal note originally and no effect on the State or local governments financially); *Assembly Judiciary Hearing on S.B. 231, supra* note 1, at 48 (discussing briefly the \$400,000 fiscal note for S.B. 231).

<sup>201</sup> *SB231 Votes*, NEV. ELECTRONIC LEGIS. INFO. SYSTEM, <https://nelis.leg.state.nv.us/76th2011/App#/76th2011/Bill/Votes/SB231> (last visited Nov. 30, 2014). Yea votes: Greg Brower, Barbara Cegavske, Allison Copening, Mo Denis, Don Gustavson, Elizabeth Halseth, Joe Hardy, Ben Kieckhefer, John Lee, Mark Manendo, Mike McGinness, David Parks,

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On June 1, S.B. 231 faced increasingly fierce resistance from NSCA and NSHE in the Assembly Committee on Judiciary.<sup>203</sup> Senator Lee proposed an amendment to prohibit campus carry “[o]n the premises of a dormitory, apartment or other facility for housing that is located on the property of [NSHE],” but the committee did not discuss this amendment.<sup>204</sup> Some opponents were also concerned about the number of childcare facilities and elementary schools on NSHE property.<sup>205</sup> Majority Whip William Horne,<sup>206</sup> the Chairman of the Assembly Committee on Judiciary, did not permit S.B. 231 to reach a floor vote because of these concerns.<sup>207</sup> Horne stated that “[S.B. 231] did not have the votes . . . [and if] it doesn’t have the votes, I don’t call it up.”<sup>208</sup> Yet, with support from the National Rifle Association,<sup>209</sup> the Utah Attorney General,<sup>210</sup> and the Nevada State Law Enforcement Officers’ Association,<sup>211</sup> S.B. 231 allegedly did have the votes to pass the Assembly.<sup>212</sup>

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Dean Rhoads, Michael Roberson, and James Settelmeyer. *Id.* Nay votes: Shirley Breeden, Steven Horsford, Ruben Kihuen, Sheila Leslie, Michael Schneider, and Valerie Wiener. *Id.*

<sup>202</sup> On June 7, the Nevada Legislature would adjourn on its 120th consecutive calendar day. *Session Information*, *supra* note 184.

<sup>203</sup> *2011 Nevada Legislative Session a Win for Nevada Gun Owners*, NRA-ILA (June 8, 2011), <https://www.nra.org/articles/20110608/2011-nevada-legislative-session-a-win-f> (discussing briefly the lobbying efforts of the NSHE and NSCA).

<sup>204</sup> *Assembly Judiciary Hearing on S.B. 231*, *supra* note 1, exhibit R (mock-up, proposed amendment). *See also id.* at 45–47.

<sup>205</sup> *See Assembly Judiciary Hearing on S.B. 231*, *supra* note 1, at 50–51 (discussing the problem of enforcing firearms regulations at childcare facilities on NSHE property while still permitting individuals to campus carry).

<sup>206</sup> *Legislative Biography—2011 Session: William C. Horne*, NEV. LEGISLATURE, <http://www.leg.state.nv.us/Session/76th2011/Legislators/Assembly/Horne.pdf> (last visited Nov. 30, 2014).

<sup>207</sup> *2011 Nevada Legislative Session a Win for Nevada Gun Owners*, *supra* note 203.

<sup>208</sup> *See Bissett*, *supra* note 18.

<sup>209</sup> *Assembly Judiciary Hearing on S.B. 231*, *supra* note 1, exhibit E (letter from Carrie Herbertson, Nev. St. Liaison, Nat’l Rifle Ass’n, in support) (discussing the number of sex offenders that reside near Nevada campuses and the high student to police officer ratio at these campuses).

<sup>210</sup> *Assembly Judiciary Hearing on S.B. 231*, *supra* note 1 exhibit I (letter from Mark L. Shurtleff, Utah Att’y Gen., in support) (“The state of Utah has a proud heritage of trusting its CCW permit holders as some of the most law-abiding, respectful citizens in the state. Permit holders can carry in schools from kindergarten through college and there has not been a single incident that resulted from an individual legally in possession of a firearm on one of our campuses, despite the litany of hypothetical scenarios that have been presented by law enforcement officials and college administrators alike.”).

<sup>211</sup> *Assembly Judiciary Hearing on S.B. 231*, *supra* note 1 exhibit O, attachment 5 (letter from Ron Cuzze, President & CEO, Nev. St. Law Enforcement Officers’ Ass’n, in support) (“I can not even remember how many weapons that my fellow officers and I confiscated from gang members, drug dealers and other shady folks on the various UNLV properties. So which group presents the real threat?”).

<sup>212</sup> *2011 Nevada Legislative Session a Win for Nevada Gun Owners*, *supra* note 203.

*B. The 77th Regular Session of the Nevada Legislature*

After the Assembly failed to reach a vote on S.B. 231 in 2011, the Nevada Legislature collectively introduced three campus carry bills in 2013. Senator Joseph Hardy<sup>213</sup> introduced the first campus carry bill on March 7. Senate Bill 223 (“S.B. 223”) sought to grant all NSHE employees with a CCF permit permission to campus carry so long as employees notified NSHE of their intent to carry a concealed firearm.<sup>214</sup> In the Senate Committee on Judiciary on March 25, S.B. 223 faced resistance from the same opponents of S.B. 231 in 2011.<sup>215</sup> “Faculty permission” now exists in Arkansas.<sup>216</sup>

Assemblywoman Michele Fiore<sup>217</sup> introduced a second campus carry bill on March 12. Assembly Bill 143 (“A.B. 143”) sought to grant all CCF permit holders full permission to campus carry.<sup>218</sup> In the Assembly Committee on Ju-

<sup>213</sup> *Legislator Information: Senator Joseph (Joe) P. Hardy*, NEV. LEGISLATURE, <http://www.leg.state.nv.us/App/Legislator/A/Senate/77th2013/12> (last visited Nov. 30, 2014). Senators Joseph Hardy and Donald Gustavson joined Assemblywoman Michele Fiore and Assemblymen Paul Anderson, Jim Wheeler, Crescent Hardy, and Pat Hickey as Primary Sponsors for S.B. 223. *SB223 Overview*, NEV. ELECTRONIC LEGIS. INFO. SYSTEM, <https://nelis.leg.state.nv.us/77th2013/App#/77th2013/Bill/Overview/SB223> (last visited Nov. 30, 2014). Senators Barbara Cegavske, Pete Goicoechea, and James Settelmeyer joined Assemblywoman Melissa Woodbury and Assemblymen John Ellison and Lynn Stewart as Co-Sponsors. *Id.* Many of these Primary and Co-Sponsors also sponsored S.B. 231 in 2011. *See SB231 Overview*, *supra* note 191.

<sup>214</sup> *See* S. 223, 2013 Leg., 77th Reg. Sess. (Nev. 2013).

<sup>215</sup> *See Hearing on S.B. 223 Before the S. Comm. Judiciary*, 2013 Leg., 77th Reg. Sess. 7–15 (Nev. 2011) (the UNLV Chief of Police, UNR Chief of Police, CSN Chief of Police, Nevada Faculty Alliance, and Las Vegas Metropolitan Police Department all returned with the support of the President of UNR and Chancellor of NSHE); *id.* exhibit T, (letter from Vanessa Spinazola, Legis. & Advocacy Dir., ACLU of Nev., in opposition) (discussing the “sensitive places” prohibition in *Heller* and constitutionality of Nevada laws).

<sup>216</sup> *Laws Concerning Carrying Concealed Firearms on Campus in Arkansas*, ARMED CAMPUSES, <http://www.armedcampuses.org/arkansas/> (last visited Nov. 30, 2014) [hereinafter *Arkansas Campus Carry Laws*] (the Arkansas Legislature granted faculty members permission to campus carry in 2013, but the State permits universities to “opt out” of the law and continue to prohibit campus carry).

<sup>217</sup> *Legislator Information: Assemblywoman Michele Fiore*, NEV. LEGISLATURE, <http://www.leg.state.nv.us/App/Legislator/A/Assembly/77th2013/4> (last visited Nov. 30, 2014). Senators Donald Gustavson, James Settelmeyer, Barbara Cegavske, and Pete Goicoechea joined Assemblywoman Michele Fiore and Assemblymen Jim Wheeler, Paul Anderson, Ira Hansen, and Pat Hickey as Primary Sponsors for A.B. 143. *AB143 Overview*, NEV. ELECTRONIC LEGIS. INFO. SYSTEM, <https://nelis.leg.state.nv.us/77th2013/App#/77th2013/Bill/Overview/AB143> (last visited Aug. 23, 2014). Senators Scott Hammond and Joseph Hardy joined Assemblymen Richard Carrillo, Wesley Duncan, John Ellison, Tam Grady, John Hambrick, Crescent Hardy, Randy Kirner, James Ohenschall, James Oscarson, Lynn Stewart and Assemblywoman Melissa Woodbury as Co-Sponsors. *Id.* Many of these Primary and Co-Sponsors also sponsored S.B. 231 in 2011. *See SB231 Overview*, *supra* note 191.

<sup>218</sup> *See* Assemb. 143, 2013 Leg., 77th Reg. Sess. (Nev. 2013); *see also Nevada: Bills Await Committee Action as Legislative Deadline Approaches*, NRA-ILA (Apr. 10, 2013), <https://www.nra.org/articles/20130410/nevada-bills-await-committee-action-as-legislative-deadline-approaches>.

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diciary on April 3, A.B. 143 faced resistance from the same opponents of S.B. 223 and S.B. 231 in 2011.<sup>219</sup> Opponents argued that campus carry would lead to senseless acts of violence, but the Utah Attorney General testified that zero such incidents had occurred in Utah since the State granted full permission in 2006.<sup>220</sup> A.B. 143 continued to prohibit campus carry at “sporting venues” and did not initially prohibit the possession or storage of firearms in dorms.<sup>221</sup> In an effort to reach a legislative compromise, Assemblywoman Fiore proposed an amendment to prohibit campus carry before sunset and the possession or storage of firearms in dorms.<sup>222</sup>

Assemblyman John Hambrick introduced a final campus carry bill on March 12. Assembly Bill 235 (“A.B. 235”) sought to grant “vehicular permission” on the property of NSHE.<sup>223</sup> Like other states that grant “vehicular permission,”<sup>224</sup> A.B. 235 required that the firearm remain in the vehicle at all times or be secured in the glove compartment or trunk.<sup>225</sup> There was no committee meeting on A.B. 235 or discussion on the merits of “vehicular permission.”<sup>226</sup>

Like S.B. 231 in 2011, A.B. 143, S.B. 223, and A.B. 235 remained in committee and did not reach a floor vote during the 77th Regular Session of the Nevada Legislature.<sup>227</sup> Campus carry opponents rejected (1) full permission, (2) partial permission but not in dorms, (3) partial permission after sunset, (4) “faculty permission,” and (5) “vehicular permission.” Campus administrators, police services, and faculty continued to oppose any degree of campus carry despite a willingness to reach a legislative compromise by proponents. In the face of such staunch defiance, this broad approach to campus carry was still insufficient to pass meaningful legislation in 2013. During the 78th Regular Ses-

<sup>219</sup> *Assembly Judiciary Hearing on A.B. 143*, *supra* note 19, at 21–35 (the UNLV Chief of Police, UNR Chief of Police, CSN Chief of Police and Nevada Faculty Alliance all returned with the support of the Chancellor of NSHE and Nevada Women’s Lobby); *see also University Leaders Reject Constitution*, MICHELE FIORE (Apr. 10, 2013), <http://votefiore.com/2013/04/10/university-leaders-reject-constitution/> (Assemblywoman Fiore’s personal account of the Assembly Committee on Judiciary meeting).

<sup>220</sup> *Assembly Judiciary Hearing on A.B. 143*, *supra* note 19 exhibit U (letter from John E. Swallow, Utah Att’y Gen.).

<sup>221</sup> Nev. Assemb. 143.

<sup>222</sup> *See Assembly Judiciary Hearing on A.B. 143*, *supra* note 19 exhibit E (proposed amendment).

<sup>223</sup> *See* Assemb. 235, 2013 Leg., 77th Reg. Sess. (Nev. 2013).

<sup>224</sup> *See* Part IV.C (these states include Georgia, Illinois, Kentucky, Minnesota, Nebraska, North Carolina, Ohio, Oklahoma, South Carolina, Tennessee, and Texas).

<sup>225</sup> Nev. Assemb. 235.

<sup>226</sup> *See AB235 Overview*, NEV. ELECTRONIC LEGIS. INFO. SYSTEM, <https://nelis.leg.state.nv.us/77th2013/App#/77th2013/Bill/Overview/AB235> (last visited Nov. 30, 2014).

<sup>227</sup> The Senate and Assembly were unable to continue any discussion on the three campus carry bills after April 13. *See* NEV. LEGISLATURE JOINT STANDING R. 14.3.1 (“The final standing committee to which a bill . . . is referred in its House of origin may only take action on the bill . . . on or before the 68th calendar day of the legislative session.”).

sion of the Nevada Legislature, efforts to grant some degree of campus carry will continue.<sup>228</sup>

## VI. FUTURE OBSTACLES FOR CAMPUS CARRY PROPONENTS

Throughout the country, states are beginning to acknowledge the fundamental right to keep and bear arms for self-defense and grant some degree of campus carry.<sup>229</sup> In state legislatures and the courts, opponents have argued that (1) alcohol, drugs, and campus carry will lead to acts of violence; (2) CCF permit holders are ill-equipped to handle a campus shooter; and (3) state legislatures and universities may prohibit campus carry because of university interests. If proponents provide evidentiary support for their counterarguments and redefine the modern argument for campus carry, they can successfully challenge these arguments in the State of Nevada and elsewhere. Proponents must respect university interests, but opponents should be willing to accept some degree of partial permission to reach a legislative compromise.

### A. Challenging the “Animal House” Myth

Opponents suggest that campus carry will lead to violence between drunk and disorderly students.<sup>230</sup> This fear is the primary concern of campus police services.<sup>231</sup> Campus police cite to numerous outbreaks of fighting after sporting events between drunken students and believe that introducing firearms to these fights could be deadly.<sup>232</sup>

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<sup>228</sup> See *supra* note 188.

<sup>229</sup> See *supra* Part IV.A–D.

<sup>230</sup> See Lewis, *supra* note 59, at 24 (discussing the increased likelihood of accidental discharges at student events where drugs or alcohol are consumed).

<sup>231</sup> See *UNLV Chief of Police Testimony*, *supra* note 17, at 32 (“The combination of alcohol, individuals carrying firearms and excessive drinking can be potentially lethal.”); *UNR Chief of Police Testimony*, *supra* note 77, at 25 (“[Athletic] events could become killing fields if legally armed individuals are allowed to carry weapons into these events and an individual resorted to using a firearm.”). *But see* A.V. Sherk, *Campus Police Not Concerned By Conceal Carry Law*, THE BLUE BANNER, <http://thebluebanner.net/campus-police-not-concerned-by-conceal-carry-law/> (Oct. 16, 2013) (discussing how all police do not share this belief); Elder, *supra* note 110 (“A survey of 23,113 police chiefs and sheriffs across the country found that 62 percent of these top cops agreed that ‘a national concealed handgun permit would reduce rates of violent crime.’ About 80 percent of rank-and-file police officers, according to polls, support the right of trained citizens to carry concealed weapons.”); *see also* Adan Salazar, *Rejected Brat Goes on Killing Spree Because Girls Didn’t Like Him*, INFOWARS.COM (May 25, 2014), <http://www.infowars.com/rejected-brat-goes-on-murderous-rampage-because-girls-didnt-like-him/> (discussing how the rate of violent crime has decreased as states issue more CCF permits).

<sup>232</sup> *UNR Chief of Police Testimony*, *supra* note 77, at 25 (“The UNR police arrested, cited or took into civil protective custody over 1,000 individuals for alcohol-related incidents between 2006 and 2010.”); *see also UNLV Chief of Police Testimony*, *supra* note 17, at 32 (describing how if someone shot a firearm at a sporting event, frightened crowds could trample spectators and law enforcement).

This “Animal House” myth is the fear that alcohol, drugs, and concealed firearms will lead to rampant violence between students.<sup>233</sup> This fear is fueled by (1) a belief that students will use their firearms to commit crimes and acts of violence and (2) a fear and misunderstanding of firearms.<sup>234</sup> Challenging the “Animal House” myth remains one of the most significant obstacles for proponents, but they can dispel this myth with two answers.

First, proponents should continue to rely on statistical and anecdotal evidence that CCF permit holders are no more likely to engage in violence on campus than they do off campus.<sup>235</sup> Universities that currently grant some degree of campus carry have not documented an increase in CCF permit holders brandishing or threatening to use firearms to intimidate students or faculty members.<sup>236</sup> CCF permit holders also carry off campus without committing acts of violence.<sup>237</sup>

The consumption of alcohol to excess can certainly lead to violence. Nevertheless, if alcohol and campus carry truly posed a substantial threat, more violence would exist at venues where firearms and the consumption of alcohol already coexist. This sort of violence does not occur at the rate that opponents suggest. Some states even permit an individual to be more intoxicated and carry a firearm than drive a motor vehicle.<sup>238</sup> Proponents might still consider a

<sup>233</sup> See NATIONAL LAMPOON’S ANIMAL HOUSE (Universal Pictures 1978).

<sup>234</sup> Generally, the media has sensationalized the dangers of firearm ownership and vilified CCF permit holders so that now even innocent acts are mistaken for firearms or gunfire and cause mass panic and hysteria. See, e.g., Clarence Williams, *American U. Locked Down 2 Hours*, WASH. POST, Dec. 12, 2013, at B8 (students told to “shelter in place” when an off-duty police officer carrying a firearm causes panic and hysteria at American University); *Mall Goes into Lockdown After Mistaken Gun Sighting*, ABC 7 (Nov. 19, 2013, 8:43 PM), <http://www.abc-7.com/story/24015440/mall-goes-into-lockdown-after-mistaken-gun-sighting> (folded up apron mistaken for firearm and causes mall lockdown); Brian Sumers, *Car Crash Mistaken for Gunshots at LAX, Causing Panic*, DAILY BREEZE (Nov. 22, 2013), <http://www.dailybreeze.com/general-news/20131122/car-crash-mistaken-for-gunshots-at-lax-causing-panic> (car crash at Los Angeles International Airport mistaken for gunfire causes panic); Paul Joseph Watson, *Elementary School Girl Threatened with Arrest over ‘Paper Gun’*, PRISON PLANET (Jan. 23, 2013), <http://www.prisonplanet.com/elementary-school-girl-threatened-with-arrest-over-paper-gun.html> (elementary school student mistakenly brings “paper gun” to school and is threatened with arrest); see also *supra* note 103 (discussing accidental discharges, negligent discharges, and the responsible carrying of concealed firearms).

<sup>235</sup> See *supra* note 102 (discussing how the 9.5 million CCF permit holders in the United States are substantially less likely to commit acts of violence than the general population).

<sup>236</sup> See *supra* note 104.

<sup>237</sup> *Common Arguments Against Campus Carry*, *supra* note 92 (discussing how CCF permit holders carry in office buildings, grocery stores, shopping malls, restaurants, and churches without committing acts of violence).

<sup>238</sup> Compare NEV. REV. STAT. § 484C.210(1) (2013) (driving a motor vehicle with a blood alcohol concentration level of .08 is a DUI in the State of Nevada), *with id.* § 202.257(1)(a) (“It is unlawful for a person who . . . [h]as a concentration of alcohol of 0.10 or more in his or her blood or breath . . . to have in his or her actual physical possession any firearm.”); see also *id.* § 202.257(1)(b) (CCF permit holders are also prohibited from using controlled substances while carrying a firearm).

prohibition of campus carry at campus venues if this would help facilitate a legislative compromise.<sup>239</sup>

Second, proponents should continue to emphasize the penalties for violating laws that prohibit (1) the use or threatened use of force or violence while carrying a concealed firearm, and (2) the consumption of alcohol to excess while carrying a concealed firearm. If a firearm “is brandished, aimed or otherwise handled by the person in a manner which endanger[s] others,” the individual must forfeit the firearm.<sup>240</sup> If charged with a violent misdemeanor or felony, the sheriff will also suspend that individual’s CCF permit immediately.<sup>241</sup> A misdemeanor conviction will prohibit the CCF permit holder from carrying a concealed firearm for three years; a felony conviction for life.<sup>242</sup> These penalties are a strong deterrent to prevent the drunk and disorderly conduct of CCF permit holders and perhaps account for the low rate of violent crime committed by CCF permit holders.<sup>243</sup>

These two answers lay the foundation to challenge the “Animal House” myth. Proponents should respect the concerns of campus police services, but their belief that alcohol, drugs, and concealed firearms will lead to rampant violence is speculative. Proponents should not allow this myth to influence future debate. There is no evidence that the millions of CCF permit holders in the United States are suddenly more dangerous when they step foot on campus. In fact, the opposite may be true. CCF permit holders are statistically less likely to commit an act of violence than the general population, and the penalties for such an act are a strong deterrent.<sup>244</sup>

#### B. *Redefining the Modern Argument for Campus Carry*

Opponents also suggest that the minimum training necessary to obtain a CCF permit does not adequately prepare an individual to handle dangers like a campus shooter, and CCF permit holders will not deter these individuals.<sup>245</sup>

<sup>239</sup> This appears to be an already acceptable compromise for some opponents and proponents. *See supra* note 195 and accompanying text. In 2011, a UNLV employee suggested amending S.B. 231 to not just prohibit concealed firearms at “sporting venues” but also any venue that seats more than one thousand people on campus. *Id.*

<sup>240</sup> NEV. REV. STAT. § 202.257(4).

<sup>241</sup> *Id.* § 202.3657(6).

<sup>242</sup> *See id.* §§ 202.3657(4)(e)–(f).

<sup>243</sup> *See* Kopel, *supra* note 102 (discussing the low rate of violent crime by CCF permit holders); Michael Peltier, *Florida Nears 1 Million Permits for Concealed Weapons*, REUTERS (Dec. 12, 2012, 5:53 PM), <http://www.reuters.com/article/2012/12/12/us-usa-florida-guns-idUSBRE8BB1SR20121212> (stating that the State of Florida has only revoked 0.3 percent of the two million CCF issued since 1987).

<sup>244</sup> *See* discussion *supra* notes 102 and 103.

<sup>245</sup> Lewis, *supra* note 59, at 23 (discussing how a student with limited training is unlikely to stop or deter a person suffering from mental illness); *see also UNLV Chief of Police Testimony, supra* note 17, at 31 (discussing the dangers of campus carry during an active shooter scenario). Armed individuals also open fire on armed police officers occasionally, further weakening the belief that somehow the presence of firearms deters violent crime. *See* Craig

Opponents argue that it is too easy to obtain a CCF permit and the police engage in more comprehensive training to handle this kind of danger.<sup>246</sup> Like the “Animal House” myth, challenging this argument is a significant obstacle for proponents in future debates.

It may be difficult for proponents to challenge this argument. Campus shootings occur infrequently and the murder rate on college campuses is very low.<sup>247</sup> The rate of violent crime is also low, and opponents suggest that concealed firearms are unnecessary to protect from such minimal crime on college campuses.<sup>248</sup> The minimum training to obtain a CCF permit is also not as comprehensive as scenario-based police exercises.<sup>249</sup> Opponents fear that an ill-prepared student with a CCF permit would pose additional dangers to himself and others during an emergency. Proponents can challenge these claims with three answers.

First, if proponents advocate that CCF permit holders can stop or deter acts of violence on college campuses, this is an uphill battle. Proponents should instead advocate that “gun free” zones such as college campuses leave students, faculty, and staff vulnerable to dangers both “on campus” and “off campus.”<sup>250</sup> Current laws and university policies that prohibit any degree of campus carry

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Giammona, *Man Shot Inside Utah Police Station*, NBC NEWS (Apr. 29, 2013, 9:48 AM), [http://usnews.nbcnews.com/\\_news/2013/04/29/17971300-man-shot-inside-utah-police-station](http://usnews.nbcnews.com/_news/2013/04/29/17971300-man-shot-inside-utah-police-station) (man opens fire in Utah police station); *Vernon Hills Shooting*, *supra* note 112 (man opens fire in police station to commit “suicide by cop”).

<sup>246</sup> See *UNLV Chief of Police Testimony*, *supra* note 17, at 32; Lewis, *supra* note 59, at 22 (discussing how easily the author obtained a CCF permit in the State of Mississippi).

<sup>247</sup> Lewis, *supra* note 59, at 20 (discussing the murder rate at U.S. post-secondary institutions).

<sup>248</sup> See *id.*; see also *Assembly Judiciary Hearing on S.B. 231*, *supra* note 1 exhibit J (statement of CSN Student Justin McAfee); *UNR Chief of Police Testimony*, *supra* note 77, at 27 (stating that UNR is “safe”); *Nevada Universities Crime Maps*, *supra* note 163 (showing interactive maps that identify the crimes that occur on UNLV and UNR).

<sup>249</sup> For example, UNLV police services train several times per year to handle an active shooter scenario, but most CCF permit holders only receive the NSCA minimum training requirements. See *UNLV Chief of Police Testimony*, *supra* note 17, at 32.

Police train using realistic scenarios at least three times a year. The premise that an elementary-trained individual could successfully thwart an attack by an armed assailant is flawed. It is more likely that the individual would pose an additional danger to other students in the area or to himself. It is possible that armed students might mistake one another for assailants and inflict unintended friendly fire on innocent bystanders.

*Id.*

<sup>250</sup> During the State of Nevada’s attempt to grant campus carry in 2011, Stefanie Utz, a UNR graduate and sexual assault survivor, stated that a concealed firearm “gives us a chance, at least a chance, to defend ourselves.” Spillman, *supra* note 17. Nevada State Senator John Lee further added that the campus carry bill was “not about campus security, [but] personal security.” *Id.* This is undoubtedly the strongest argument for future legislative sessions, judicial challenges, and promoting “vehicular permission.” See *supra* Part IV.C; see also Kasper, *supra* note 155 (“[The law] infringed on their right to carry [firearms] in general . . . . Law-abiding citizens couldn’t carry a gun all day if they knew they would be stopping on a college campus at some point because once they arrived there was no way to legally store the gun.”).

leave CCF permit holders defenseless anywhere between college campuses and home.<sup>251</sup> The professor that stops for groceries after work; the student that stops for gas across the street from campus; these are the real and unfortunately less documented dangers of “no permission to campus carry” states.<sup>252</sup>

Second, no state requires that individuals perfect their skills in self-defense before carrying a concealed firearm and to demand proficiency that could stop campus shooters is unrealistic.<sup>253</sup> While the training that CCF permit holders receive may be different than campus police services, this does not make these individuals less capable of lawfully using a firearm for self-defense.<sup>254</sup> Once a

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<sup>251</sup> At this time, the State of Nevada does not even grant “vehicular permission.” This could be one way to reach a legislative compromise. “Vehicular permission” would keep firearms out of classrooms and dorms but still grant CCF permit holders the right to keep and bear arms for self-defense once the individual has left campus. Opponents fear that criminals may target these vehicles for theft, but there is no history of such thefts in states that currently grant “vehicular permission.” See *supra* Part IV.C.

<sup>252</sup> See *Senate Gov’t Affairs Hearing on S.B. 231*, *supra* note 17, at 12 (testimony of Scott Durward, Front Sight Firearms Training Inst.) (“[A student of mine] works at UNR and, although she has obtained a CCW permit, cannot carry at work. She is left vulnerable at work and worse, she is left vulnerable as she walks from her office through the poorly lit campus to her car. She is unable to have her weapon in the car because where she parks is considered on campus. This makes her vulnerable at work, vulnerable walking to and from her car, and vulnerable in her commute to and from home.”)

<sup>253</sup> *Crime on College Campuses in the U.S.*, STUDENTS FOR CONCEALED CARRY (May 2009), <http://concealedcampus.org/campus-crime/>.

<sup>254</sup> While there is no comprehensive data on the number of times that an individual lawfully uses a firearm for self-defense, these instances do exist but go widely unreported. See Larry Bell, *Disarming the Myths Promoted by the Gun Control Lobby*, FORBES (Feb. 21, 2012, 1:32 PM), <http://www.forbes.com/sites/larrybell/2012/02/21/disarming-the-myths-promoted-by-the-gun-control-lobby/> (discussing briefly the number of crimes thwarted each year by individuals with firearms); see also *College Students on Probation for Pulling Gun to Defend Against Intruder*, REAL CLEAR POL. (Nov. 11, 2013), [http://www.realclearpolitics.com/video/2013/11/11/college\\_students\\_on\\_probation\\_pulling\\_gun\\_to\\_defend\\_against\\_intruder\\_.html](http://www.realclearpolitics.com/video/2013/11/11/college_students_on_probation_pulling_gun_to_defend_against_intruder_.html) (a student used a firearm for self-defense after a six-time felon attempted to enter his apartment); *Crime on College Campuses in the U.S.*, *supra* note 253 (listing the number of students that successfully used firearms for self-defense); Elder, *supra* note 110 (discussing several instances where an students and faculty used a firearm to prevent additional death during a school shooting); Colin Flaherty, *Surprise! Media Finally Wake Up to Knockout Game*, WND (Nov. 19, 2013, 8:35 PM), <http://www.wnd.com/2013/11/surprise-media-finally-wake-up-to-knockout-game/> (a man with CCF permit wounds an attacker after being attacked with a Taser); AWR Hawkins, *Video: Waffle House Burglar Shot, Killed By Concealed Carry Permit Holder*, BREITBART (May 26, 2014, 8:31PM), <http://www.breitbart.com/Big-Government/2014/05/05/Video-Waffle-House-Robber-Shot-Killed-By-Concealed-Carry-Permit-Holder> (man with CCF permit shoots and kills robber with a firearm that was terrorizing restaurant); *Winnemucca Police Statement on Bar Shootings*, RENO GAZETTE-J. (May 26, 2008, 4:29 PM), <http://archive.rgj.com/article/20080526/NEWS18/80526010/Winnemucca-police-statement-bar-shootings> (a Reno man with CCF permit kills a shooter who opened fire on crowded bar). However, it only takes one CCF permit holder with poor judgment to spark outrage and national criticism of concealed weapons. See Nick Wing, *Petition Calls for George Zimmerman’s Concealed Carry License to be Revoked*, HUFFINGTON POST (July 18, 2013,

CCF permit holder steps foot on campus, this individual is not suddenly less capable of using a firearm responsibly or using good judgment. CCF permit holders are not trained vigilantes “looking for trouble,” and most shootings that involve a CCF permit holder occur within several feet to escape a dangerous situation.<sup>255</sup>

Lastly, while murder and violent crime rates on college campuses may be low, these statistics are geographically misleading.<sup>256</sup> Many crimes go unreported and a violent crime committed “on campus” is the difference between robbing a business on the left or right side of the street.<sup>257</sup> The student murdered walking home from campus across the street is now the city’s problem, not the campus statistic.<sup>258</sup> Opponents frequently use campus crime statistics to make this deceptive argument, and proponents should emphasize that these statistics are misleading.<sup>259</sup>

These answers lay the foundation for redefining the modern argument for campus carry. If CCF permit holders could stop or deter a campus shooter, this would be a great benefit to the community. This expectation is unrealistic and

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9:35 PM), [http://www.huffingtonpost.com/2013/07/18/george-zimmerman-concealed-carry-petition\\_n\\_3617718.html](http://www.huffingtonpost.com/2013/07/18/george-zimmerman-concealed-carry-petition_n_3617718.html).

<sup>255</sup> See *Common Arguments Against Campus Carry*, *supra* note 92; Paul Hsieh, *The Single Most Important Lesson Gun Owners Should Learn from the George Zimmerman Case*, FORBES (July 23, 2013, 8:00 AM), <http://www.forbes.com/sites/paulhsieh/2013/07/23/the-single-most-important-lesson-gun-owners-should-learn-from-the-george-zimmerman-case/> (discussing the responsibility of CCF permit holders to avoid dangerous situations and “back down” because they recognize the possibility of escalation).

<sup>256</sup> *Crime on College Campuses in the U.S.*, *supra* note 253.

<sup>257</sup> See *id.*; see also *Collins Exhibit*, *supra* note 1, at 3 (Collins did not initially report the rape, but Reno detectives approached Collins after her roommate revealed the rape and believed it may be linked to Denison’s abduction); *Crime on College Campuses in the U.S.*, *supra* note 253 (“Many colleges are mingled in or near busy city blocks with high rates of crime, yet if a crime is committed off of the campus boundary . . . it is not included.”).

<sup>258</sup> Based on an unfortunate incident where a college student was murdered while walking two girls home from the campus library. See Flaherty, *supra* note 254.

<sup>259</sup> In Reno, Nevada, an individual has a 1 in 192 chance of becoming a victim of a murder, rape, robbery, or assault. *Crime Rates for Reno, NV*, NEIGHBORHOOD SCOUT, <http://www.neighborhoodscout.com/nv/reno/crime/> (last visited Feb. 7, 2015). This rate of violent crime is well above the national average, and Reno is only safer than 16 percent of all other U.S. cities. *Id.*; see also *UNR Chief of Police Testimony*, *supra* note 77, at 27, 30 (claiming that UNR is “safe,” refusing to speak about surrounding neighborhoods, but later stating that “[the university] is an oasis in the middle of a crime area”); Gloria Davis, *Do Students Feel Safe at UNR?*, YOUTUBE (Mar. 8, 2013), <http://www.youtube.com/watch?v=v-3CGICfGpU> (discussing one student’s fear of walking home from UNR). In Las Vegas, this chance of becoming a victim of a violent crime is 1 in 127. *Crime Rates for Las Vegas, NV*, NEIGHBORHOOD SCOUT, <http://www.neighborhoodscout.com/nv/las-vegas/crime/> (last visited Feb. 7, 2015). Las Vegas is approaching the top 10 percent of the most unsafe cities in the United States, and an individual is nearly twice as likely to be raped, robbed, or assaulted in Las Vegas than anywhere in the country. *Id.*; see also *Las Vegas, NV*, CRIMEMAPPING.COM, <http://www.crimemapping.com/map/nv/lasvegas> (last visited Aug. 23, 2014) (an interactive map of crimes that occur in Las Vegas).

unpersuasive to opponents.<sup>260</sup> Proponents should instead advocate that current laws and university policies that do not grant any degree of campus carry violate the fundamental right to keep and bear arms for self-defense. “Gun free” zones such as college campuses dangerously disarm countless CCF permit holders both “on campus” and “off campus.” These “off campus” dangers are largely ignored by campus police services and academics because they are not relevant to safety “on campus.” Despite the relative safety of college campuses, this period of vulnerability between college campuses and home should be the focus for proponents. “Off campus” dangers have a significant place at the forefront of the campus carry debate.

*C. University Interests Such as Campus Safety & Educational Freedom*

Opponents also suggest that state legislatures and universities may prohibit campus carry because of university interests such as maintaining campus safety, promoting “academic freedom,” and protecting the freedom of speech. Opponents fear that campus carry will threaten campus safety and the integrity of the academic environment by chilling speech.<sup>261</sup> *Heller*, *McDonald*, and the prohibition of firearms in “sensitive places” permit states legislatures and universities to prohibit campus carry entirely. The courts will uphold this prohibition as a reasonable firearms regulation.

A complete prohibition of campus carry cannot be considered “reasonable” after the widely successful adoption of various degrees of partial permission and “vehicular permission” throughout the United States. Proponents must respect university interests, but these interests can coexist with some degree of campus carry to respect the fundamental right to keep and bear arms for self-defense. “Academic freedom” is not a fundamental right,<sup>262</sup> and concealed firearms have not chilled speech in locations where firearms and the First Amendment currently coexist.<sup>263</sup> As previously discussed, campus carry should not threaten campus safety.<sup>264</sup>

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<sup>260</sup> However, a survey by the National Institute of Justice found that 74% of felons avoid or abandon a burglary because they fear the homeowner may be armed. See Elder, *supra* note 110. Many of these felons admitted to abandoning at least one crime because of a similar fear. *Id.*; see also Salazar, *supra* note 231 (discussing how the rate of violent crime has decreased as states issue more CCF permits).

<sup>261</sup> See Lewis, *supra* note 59, at 14, 17–19; see also sources cited *supra* note 83.

<sup>262</sup> Opponents admit that the First Amendment does not protect “academic freedom.” Lewis, *supra* note 59, at 17 n.141.

<sup>263</sup> Freedom of speech is currently permissible in public parks, office buildings, shopping malls, and abortion clinics, and speech is not chilled in these locations just because an individual may be carrying a concealed firearm. The purpose of a concealed firearm is to remain undetected. If a firearm were concealed in these locations, its presence should not chill speech without an irrational fear of firearms or that CCF permit holders will threaten or intimidate those engaging in speech. There is no rational basis for this fear. See *supra* Part VI.A (discussing how CCF permit holders are substantially less likely to commit acts of violence and the consequences for engaging in this kind of unlawful behavior). Campus carry should be no different, but “there is, within the academic world, a cultural prejudice against

Proponents must also be prepared to challenge the “sensitive places” prohibition of *Heller* and *McDonald*. Whether a university is a “school” and therefore a “sensitive place” is confusing.<sup>265</sup> Absent clear statutory language, it is often unclear whether a CCF permit holder has violated the law by driving across a college campus via a public road.<sup>266</sup> The line that separates some universities from public property is fuzzy, and attempting to classify universities as a “sensitive place” poses a significant problem. Universities are typically intermingled with other services and public property.

Assuming that universities are a “sensitive place,” proponents must determine what concessions will help universities achieve their educational and safety interests. For instance, a prohibition of campus carry entirely does not appear permissible,<sup>267</sup> but some degree of partial permission or “vehicular permission” may be acceptable.<sup>268</sup> Opponents and proponents must each be willing to discuss their concerns without engaging in divisive and rhetorical warfare.

Discussing these concerns may not be an easy task for opponents and proponents, and the parties could certainly disagree on what is appropriate for the faculty, students, and staff at their universities. Agreement may also be difficult in states where each university poses a unique set of challenges or concerns. State legislatures could therefore request that each university determine the logistical and financial concerns of adopting various degrees of campus carry. Absent emotional appeals, the universities could then report these findings during the next legislative session. Relative to the uncertainty of engaging in costly litigation, this option could be a much more desirable solution for both parties.<sup>269</sup>

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weapons.” *Assembly Judiciary Hearing on A.B. 143*, *supra* note 19, at 10 (testimony of Ron Knect).

<sup>264</sup> See *supra* Part VI.A.

<sup>265</sup> See Rogers, *supra* note 50, at 675 (discussing how some universities lack clear boundaries separating the school, a “sensitive” area, and public roads or property where the carrying of concealed firearms is permissible).

<sup>266</sup> See *id.*

<sup>267</sup> The prohibition of campus carry entirely does not appear permissible after state court challenges throughout the United States. See *generally* Regents of the Univ. of Colo. v. Students for Concealed Carry on Campus, LLC, 271 P.3d 496 (Colo. 2012); Mitchell v. Univ. of Ky., 366 S.W.3d 895 (Ky. 2012); Or. Firearms Educ. Found. v. Bd. of Higher Educ., 264 P.3d 160 (Or. Ct. App. 2011). While these courts did not rule on the constitutionality of campus carry, they ultimately granted some degree of campus carry after reconciling competing state laws.

<sup>268</sup> See *supra* note 251 (discussing how Nevada does not recognize “vehicular permission” but this could be an area for compromise).

<sup>269</sup> If proponents were to challenge current laws and university polices that prohibit campus carry entirely, the results may disappoint opponents if the current trend to grant some degree of partial permission continues. See *infra* Part VII (discussing this avenue for proponents if opponents refuse to reach a legislative compromise). Reaching a legislative compromise may therefore be a much more desirable solution for both parties unless proponents continue

*D. Degrees of Partial Permission, Dorms Safes & Community Lockups*

Full permission to campus carry is widely successful in Utah,<sup>270</sup> but such liberal permission may not be the appropriate degree of campus carry for all states. There are a variety of alternatives. Some states instead grant partial permission to campus carry, absent classrooms, dorms, and dining facilities.<sup>271</sup> Some states grant “vehicular permission” so a CCF permit holder may carry or store a firearm in a vehicle on campus.<sup>272</sup> Other states have granted “faculty permission” or permission to campus carry after sunset.<sup>273</sup>

If opponents and proponents can agree to reach a legislative compromise, they must discuss what steps will help the university achieve its educational and safety interests. For example, opponents are concerned that campus carry will lead to higher rates of suicides and accidental discharges in dorms.<sup>274</sup> To reach a compromise, opponents must first recognize how this concern lacks foundation. Most students that live in dorms are too young to obtain a CCF permit.<sup>275</sup> The number of concealed firearms in dorms would therefore be very low.<sup>276</sup> The rate of accidental discharges is also very low.<sup>277</sup>

If these facts do not ease the concerns of opponents, universities could provide dorm safes for students. Dorm safes attach securely to walls, floors, and bedframes, and would reduce the risk of theft or misuse of firearms. Universities could require CCF permit holders to provide their own safes as a condition of living in dorms, and some universities already provide safes for a small fee.<sup>278</sup> Additionally, if a student objected to living with another student that possessed a firearm, this objection could be treated like a transfer request.

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to insist upon full permission to campus carry or opponents continue to oppose any degree of partial permission.

<sup>270</sup> See *supra* Part IV.A; see also *supra* notes 210, 220, and accompanying text (Utah Attorney General Exhibits before the Nevada Legislature in 2011 and 2013).

<sup>271</sup> See *supra* Part IV.B.

<sup>272</sup> See *supra* Part IV.C.

<sup>273</sup> See ARK. CODE ANN. § 5-73-322 (West 2013); *Arkansas Campus Carry Laws*, *supra* note 216; see also *Assembly Judiciary Hearing on A.B. 143*, *supra* note 19 exhibit E (proposed amendment to A.B. 143, which would prohibit campus carry before sunset).

<sup>274</sup> See *supra* note 78 and accompanying text.

<sup>275</sup> See *supra* note 99 (discussing how most students that live in dorms are too young to obtain a CCF permit and how the rate of suicide is unlikely to increase because most suicides occur off campus where firearm possession is already permissible).

<sup>276</sup> For the 2007–2008 academic year, 5,500 students lived in dorms at the University of Utah and only one student requested a dorm safe. LaPoint, *supra* note 79, at 17. If a student does not carry the firearm, the university requires that the student lock the firearm in a dorm safe. *Id.* Students must therefore request a safe or leave the firearm unlocked and violate the university’s firearms policy.

<sup>277</sup> See *supra* note 103 (discussing the rate of accidental discharges, negligent discharges, and the responsible carrying of concealed firearms).

<sup>278</sup> See e.g., *Optional Services*, U. UTAH, <http://housing.utah.edu/applications/optional-services.php> (last visited Nov. 30, 2014) (the fee is currently \$106 each academic year).

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The student could be assigned to a different room if uncomfortable living with a CCF permit holder. If opponents and proponents can reach a compromise involving some degree of campus carry that includes dorms, dorm safes should pose no financial burden for universities.

If this compromise does not include some degree of campus carry and dorm safes, opponents and proponents could agree on some degree of partial permission that excludes dorms. This alternative could pose a problem under *Heller* and *McDonald*. Dorms serve as a “school-home” hybrid for some students. Dorms may provide educational services such as computer labs and study rooms, but dorms also provide a home for students if they cannot afford to live off campus or the university requires students to live on campus their first year.<sup>279</sup> If the dorm is a home, students maintain a fundamental right to keep and bear arms for self-defense while they reside on campus.<sup>280</sup> To deny this right entirely, especially if the university requires students to live on campus, could pose a significant problem for opponents.<sup>281</sup> Dorm safes could solve this problem, but community lockups may be an alternative.

Several universities currently provide community lockups because they prohibit campus carry in dorms,<sup>282</sup> but lockups pose two challenges. First, universities may object to the extra administrative and financial cost of lockups. These lockups are traditionally found in campus police services. Second, CCF permit holders must retrieve and surrender their firearm daily, which defeats many benefits of obtaining a CCF permit. There still exists a period of vulnerability between campus police services and the dorm. Community lockups are therefore an unpopular alternative for opponents and proponents, but either dorm safes or lockups might solve the “dorm as home” problem. If litigated, the courts may consider some degree of campus carry and one of these solutions a “reasonable” regulation to protect university interests.

## VII. AN ALTERNATIVE ROUTE TO GRANT CAMPUS CARRY IN THE STATE OF NEVADA

If opponents and proponents are unable to reach a legislative compromise in the State of Nevada, proponents should begin to consider litigating the state laws and university policies that render Nevada a “no permission to campus

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<sup>279</sup> See Rogers, *supra* note 50, at 676 n.72.

<sup>280</sup> This is true unless the university is a “school” and therefore a “sensitive place.” This analysis poses its own challenges. See *supra* Part VI.C. (discussing university interests and whether the university is a “sensitive place”).

<sup>281</sup> This challenge will not be discussed further but has been discussed by several authors. See, e.g., Michael L. Smith, Comment, *Second Amendment Challenges to Student Housing Firearms Bans: The Strength of the Home Analogy*, 60 UCLA L. Rev. 1046 (2013) (for a thorough analysis of whether the prohibition of campus carry in dorms would survive strict scrutiny, intermediate scrutiny, or an undue burden test); Rogers, *supra* note 50, at 675–76 (discussing the issues that arise after *McDonald* with dorms); Wasserman, *supra* note 59, at 37 (discussing the dorm is “home” problem).

<sup>282</sup> See sources cited *supra* note 136.

carry” state.<sup>283</sup> NSHE requires that an individual seeking permission to campus carry demonstrate “a specific risk of attack presented by an actual threat,” “a general risk of attack presented by the nature of the individual’s current or former profession,” or “a legitimate educational or business purpose.”<sup>284</sup>

Similar to the “good cause” requirement in *Peruta*, the “risk of attack” requirement of NSHE violates the Second Amendment and impermissibly burdens the fundamental right to bear arms for self-defense. In *Peruta*, the Court of Appeals for the Ninth Circuit distinguished the words “keep” and “bear” and held that carrying a handgun outside the home for self-defense falls within the meaning of “bear[ing] Arms.”<sup>285</sup> The county could not deny requests to carry a concealed weapon just because the applicants could not demonstrate “specific threats” against them. NSHE exercises a similar discretionary authority and routinely denies all campus carry requests if the CCF permit holder cannot demonstrate a “risk of attack.”

If the university is a “school,” this could be a problem for proponents. In *Heller* and *McDonald*, the Court emphasized that its holdings should not cast doubt on “laws forbidding the carrying of firearms in sensitive places such as schools.” The Court did not define “schools,” and whether this definition includes college campuses is uncertain.<sup>286</sup>

Assuming universities are a “sensitive place,” the courts may still hold that the total prohibition of campus carry violates the Second Amendment and impermissibly burdens the fundamental right to bear arms for self-defense.<sup>287</sup> Substantial evidence exists that less restrictive alternatives are available. State legislatures have successfully adopted various degrees of campus carry with no increase in violence.<sup>288</sup> CCF permit holders are less likely to commit acts of violence than the general population.<sup>289</sup> “Gun free zones” dangerously disarm otherwise law-abiding citizens of their primary means of self-defense from “off campus” dangers.<sup>290</sup>

In the Nevada Legislature, fear and misunderstanding dominate the campus carry debate. Opponents will continue to obstruct any change in the laws that

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<sup>283</sup> NSHE routinely denies all campus carry requests but will grant permission to bring a firearm to campus for short periods of time and under limited circumstances. See Spillman, *supra* note 17 (discussing the six individuals that NSHE granted permission in 2011 and 2012).

<sup>284</sup> See NEV. SYS. OF HIGHER EDUC., *supra* note 18.

<sup>285</sup> See *supra* Part II.C.

<sup>286</sup> See *supra* note 50 (discussing the traditional definition of “schools”).

<sup>287</sup> The Court’s method of analysis and level of scrutiny for the review of firearms regulations is currently unknown. See *supra* note 59 and accompanying text; see also Rogers, *supra* note 50, at 700–01 (discussing how a state’s “[o]verbearing firearm regulations and restrictions will likely fail, even under intermediate scrutiny” if less restrictive firearm regulations exist).

<sup>288</sup> See *supra* Part IV.A–C.

<sup>289</sup> See *supra* Part VI.A.

<sup>290</sup> See *supra* Part VI.B.

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currently render Nevada a “no permission to campus carry” state. In the courts, opponents would need to demonstrate that university interests are truly threatened by the presence of concealed firearms. If proponents challenged the “risk of attack” policy of NSHE, this policy would likely not survive any level of judicial scrutiny. Less restrictive alternatives exist and can coexist with university interests.

#### CONCLUSION

Campus carry proponents in the Nevada Legislature have already introduced one bill during the 78th Regular Session to grant some degree of campus carry without first requesting written permission from NSHE. NSHE systematically denies all campus carry requests, and the Board of Regents new “risk of attack” policy creates a substantial obstacle for CCF permit holders. The “risk of attack” policy violates the Second Amendment and impermissibly burdens the fundamental right to bear arms for self-defense.

As a campus carry bill is discussed during the Legislature, its sponsors will undoubtedly encounter fierce resistance from the same opponents of campus carry bills during the 76th and 77th Regular Sessions of the Nevada Legislature. Campus police services and NSHE will promote the “Animal House” myth and stress how ill-equipped students cannot handle emergencies like a campus shooter. Opponents will also emphasize the low rate of violent crime on college campuses and how campus carry will threaten university interests like campus safety, “academic freedom,” and the freedom of speech. This strategy is predictable but easily rebuttable. Proponents must provide evidentiary support to rebut the “Animal House” myth and demonstrate how campus crime statistics are misleading. Proponents must also continue to redefine the modern argument for campus carry by stressing “off campus” dangers.

Full permission to campus carry is widely successful in Utah and Idaho but may not be the appropriate degree of campus carry for Nevada. Various degrees of partial permission exist, but opponents have rejected each of these alternatives in the Nevada Legislature. If proponents were to instead litigate the current laws and university policies that render Nevada a “no permission to campus carry” state, this staunch defiance of opponents may be unwise and expensive. A firearms policy that systematically denies the fundamental right to keep and bear arms for self-defense cannot be considered “reasonable” after *Heller*, *McDonald*, and *Peruta*, even if universities are a sensitive place. If dorms are a “school-home” hybrid, this poses an additional challenge for opponents.

Reaching a legislative compromise is therefore advisable for both parties, but this compromise will require proponents, opponents, and the Legislature to remain objective. The Legislature should encourage both parties to discuss, absent emotional appeals, what level of campus carry is appropriate for Nevada. There is no place for divisive and rhetorical warfare, and this warfare has dom-

inated the modern campus carry debate. The Legislature should also request that NSHE determine the logistical and financial concerns of adopting various degrees of campus carry and report these findings. The State of Nevada can reach a legislative compromise in 2015, but opponents must be willing to respect the fundamental right to “bear” arms for self-defense and proponents must be willing to respect university interests. Anything less than this compromise may result in costly and needless litigation if proponents and opponents are not invited to the table to discuss their equally important interests.