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**OPEN CARRY: A MOVEMENT FOR SAFETY OR THE
CONTINUANCE OF A VIOLENT ERA?**

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**OPEN CARRY: A MOVEMENT FOR SAFETY OR THE CONTINUANCE OF A
VIOLENT ERA?**

DIVYA RAJ

INTRODUCTION

*“Every citizen shall have the right to keep and bear arms in the lawful defense of himself or the state; but the Legislature shall have power, by law, to regulate the wearing of arms, with a view to prevent crime.”*¹

It is perhaps currently one of the most talked about and debated topics in the United States. The ever-intriguing gun debate is being viewed from all sides and sadly, can be measured by the tragedies this nation has faced thus far because of gun violence. Statistically, there have been at least seventy-three public mass shootings across the country since 1982, of which thirty-six have occurred since 2006.² According to researchers at Harvard University, mass shootings have been on the rise and thus leads one to wonder whether guns will potentially prevent them or instead create a continuing violent era.³

This paper focuses on the recently approved Open Carry Law in Texas, or House Bill 910, to be effective January 1, 2016.⁴ This paper will create an awareness of the new Open Carry Law, the effects of gun violence and ownership, and the possible dangerous consequences that will continue to come from it in the states. Moreover, this paper informs persons of where the United States currently stands when it comes to gun use and violence. The enactment of such a law, in a gun loving state like Texas, has created controversy for those advocating for guns and opposing gun use.⁵ Not to mention, this topic was left up to debate among local and state officials in many states before being passed.

¹ Tex. CONST. art. 1, § 23.

² Mark Follman, Gavin Aronsen, Deanna Pan, *A Guide to Mass Shootings in America*, MOTHER JONES (July 18, 2016, 6:00 PM), <http://www.motherjones.com/politics/2012/07/mass-shootings-map...>

³ *Id.*

⁴ *New Laws for Handgun Licensing Program*, TEX. DEP'T OF PUB. SAFETY, <http://www.txdps.state.tx.us/RSD/CHL/Legal/newlegislation.htm> (last visited Dec. 18, 2015).

⁵ Kevin Mahnken, *The Next Front in Texas' Open Carry Debate: Signage*, THE TRACE (Sept. 24, 2015), <http://www.thetrace.org/2015/09/texas-open-carry-concealed-carry-sign/>.

While the Texas Constitution's twenty-third section states the "Right to keep and bear arms,"⁶ the United States Constitution has the equivalent as the second amendment. Yet, the topic of guns still remains one much interpretation today, even though the U.S. Constitution is the "supreme law of the land, being the document that established America's national government, fundamental laws, and guaranteed certain basic and fundamental rights for the citizens."⁷

Today, after one hundred and thirty-nine years of its existence⁸, the Texas Constitution has evolved in terms of interpreting what the framers meant and in making amendments according to changing times. Unfortunately, with changing times, comes an increase in violence that the framers most likely had not taken into consideration when both the U.S. and Texas Constitutions were created. While Second Amendment rights are vested in all American citizens, they are a privilege that can be lost if not guarded or used properly. Hence, it is fundamental to use reasonable and good faith measures to keep guns out of the hands that abuse this privilege.

I. BACKGROUND

We face many concerns with Open Carry in Texas when associating it to all the gun tragedies faced in other states. The issue of lenient background checks or lack thereof, the issues of the after effect costs that come from gun violence, when to use guns for protection, and the fact that many guns used in shootings that kill innocent people are obtained legally, are but a few negative viewpoints that come with the new Open Carry Law. This paper will take these negative viewpoints into account while displaying how Open Carry is only the start to an even more violent era among the states.

⁶ Tex. CONST. art. 1, § 23.

⁷ *The U.S. Constitution*, HIST., <http://www.history.com/topics/constitution> (last visited Dec. 18, 2015).

⁸ *Id.*

A. What the Law Entails

The new Open Carry law will allow licensed Texans to carry handguns without a holster, or in plain view.⁹ However, these visible guns must be carried in a “shoulder” or “belt holster.”¹⁰ This law will work ideally for people that previously had a gun license because it will not require a separate license to Open Carry.¹¹ Also, current licensed gun owners will not be required to attend any additional training.¹² Accordingly, there will be training requirements related to the use of restraint holders for new applicants to teach secure methods of openly carrying guns.¹³ Effective January 1, 2016, the eligibility criteria to obtain a license to carry will also not change.¹⁴ The unchanged eligibility referred to, is that the person is a legal resident of state, at least twenty-one years of age, has had no previous felony convictions, and is of sound judgment.¹⁵

This new law, however, has exceptions. Open Carry is not permitted by a license holder on the campus of a higher education institution or a private institution of higher education, until Campus Carry becomes effective.¹⁶ Additionally, Open Carry is “not permitted on a public or private driveway, street sidewalk, parking lot, parking garage, or by an individual who is acting as an officer not in uniform.”¹⁷

⁹ Daniel Costa-Roberts, *Texas approves Open Carry law for handguns*, PBS (May 30, 2015, 3:00 PM), <http://www.pbs.org/newshour/rundown/texas-verge-passing-open-carry-law/>.

¹⁰ *New Laws for Handgun Licensing Program*, TEX. DEP’T OF PUB. SAFETY, <http://www.txdps.state.tx.us/RSD/CHL/Legal/newlegislation.htm> (last visited Dec. 18, 2015).

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Eligibility*, TEX. CHL, <http://www.texaschl.us/eligibility.htm> (last visited Dec. 20, 2015).

¹⁶ *New Laws for Handgun Licensing Program*, TEX. DEP’T OF PUB. SAFETY, <http://www.txdps.state.tx.us/RSD/CHL/Legal/newlegislation.htm> (last visited Dec. 18, 2015).

¹⁷ *Id.*

In August 2016, Campus Carry will be effective.¹⁸ Yet, this portion of the Open Carry law will “only allow license holders to carry a concealed handgun on campuses.”¹⁹ Moreover, “higher education institutions will establish rules and regulations in regards to the storage of handguns in dormitories or anywhere else on campus.”²⁰ Community colleges will abide by similar rules set forth for institutions in August 2017.²¹

Now that it is established what Open Carry will allow and when it will be effective, it is important to understand the good and bad that can result, by taking a look at the effects of guns across the United States.

B. Precedent Case Law

In the 2008 *District of Columbia v. Heller* case, the Supreme Court ruled that a District of Columbia handgun ban violated the Second Amendment.²² This case also established that the Fourteenth Amendment enjoins the state to the federal constitution, which also recognizes the right to bear arms.²³ Therefore, any state laws that violate the constitution will be ruled unconstitutional.²⁴ Further, *Heller* established that it was a violation of the Second Amendment to prohibit the possession of handguns in homes for self-defense.²⁵ After this opinion, *McDonald v. Chicago* challenged whether the Second Amendment of the Constitution applied to states because it was included in the Fourteenth Amendment’s Privileges and Immunities or Due Process

¹⁸ Bob Price, *Texas Legislature Passes Campus Carry Bill*, BREITBART (May 31, 2015), <http://www.breitbart.com/texas/2015/05/31/texas-legislature-passes-campus-carry-bill/>.

¹⁹ *New Laws for Handgun Licensing Program (Formerly known as Concealed Handgun Licensing)*, TEX. DEP’T OF PUB. SAFETY, <http://www.txdps.state.tx.us/RSD/CHL/Legal/newlegislation.htm> (last visited Dec. 18, 2015).

²⁰ *Id.*

²¹ *Id.*

²² *McDonald v. Chicago*, OYEZ, <https://www.oyez.org/cases/2009/08-1521> (last visited Sept. 25, 2016).

²³ OPEN CARRY TEXAS, <https://opencarrytexas.wordpress.com/2014/03/10/supreme-court-gun-cases/> (last visited Aug. 9, 2016).

²⁴ *McDonald v. Chicago*, OYEZ, <https://www.oyez.org/cases/2009/08-1521> (last visited Sept. 25, 2016).

²⁵ *D. C. v. Heller*, 554 U.S. 570 (2008).

Clauses.²⁶ In this case, the Supreme Court held that the Fourteenth Amendment makes the Second Amendment, for the purposes of self-defense, applicable to the states.²⁷ Within the decision in *McDonald*, the court recognized that *Heller* regarded the right of self-defense as a “fundamental” and “deeply rooted” right.²⁸

In relation to concerns about Campus Carry, *United States v. Lopez* case law is appropriate. In the Gun-Free School Zones Act of 1990, Congress made it a federal offense for any “individual knowingly to possess a firearm at a place that the individual knows, or has reasonable cause to believe, is a school zone.”²⁹ This case’s primary focus was based on the fact that the commerce clause did not apply in order for congress to overpower state law.³⁰ However, the Gun-Free School Zone Act is relevant and prohibited any guns to be in a school zone.³¹ A school zone was defined as being within “1,000 feet from the grounds of a public or private school.”³² The rules are now changing with Campus Carry. Licensed and approved gun owners in their license state of where the school is located *can* carry on the premise.³³ However, this bill will allow private universities to opt out and public universities to designate certain parts of their campuses as gun-free zones.³⁴

II. ISSUES WITH GUNS AND CONSEQUENTIAL GUN VIOLENCE

A. *The Problems of Justifying Gun Use Today*

From the enactment of Open Carry, there remains numerous consequences. With Open Carry now in progress, disagreements have persisted. Open Carry protects our second amendment

²⁶ *McDonald v. City of Chicago*, 561 U.S. 742 (2010).

²⁷ *McDonald v. Chicago*, OYEZ, <https://www.oyez.org/cases/2009/08-1521> (last visited Sept. 25, 2016).

²⁸ *Id.*

²⁹ *U.S. v. Lopez*, 514 U.S. 549 (1995).

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ Manny Fernandez & Dave Montgomery, *Texas Lawmakers Pass a Bill Allowing Guns at Colleges*, NY TIMES (June 2, 2015), <http://www.nytimes.com/2015/06/03/us/texas-lawmakers-approve-bill-allowing-guns-on-campus.html>.

³⁴ *Id.*

rights, which is often the most common rebuttal from gun advocates, who rightfully use this argument.

There is a difference, however, between the right to protect yourself and taking the law into your own hands. In a law abiding process of obtaining a concealed handgun license (“CHL”) a person will have taken a training class, passed a federal background check, and supplied all required documents. This new CHL will allow a person to be out in public with a visible gun. Now what? When is gun use justified? According to Concealed Nation, “in the event you feel that your life was in ‘immediate danger,’ you would be justified to draw your firearm as self-defense.”³⁵

Nonetheless, it is essential to take into consideration the world we live in today. A world that can raise feeling of a fear of imminent danger protruding at any moment; a world consisting of fears from race, gender, sexual orientation, and religion. When fear becomes so conventional in the world, how can we know that guns will truly be used for the safety of a person? The issue is distinguishing self-defense from a racial, gender, sexual orientation, or religion motivated hate crime.

The Texas Hate Crimes Act defines hate crimes as crimes “that are motivated by prejudice, hatred or advocacy of violence.”³⁶ Statistics show that in 2014 there were a reported number of 166 hate crime incidents.³⁷ Who are the real victims in these situations: the gun owner or the person motivating prejudice and hatred? The fear a gun owner has of a person based on hate or prejudice is in no way a means of justification for gun use nor can it constitute as *self-defense*. Yet, many gun violence statistics show that gun use is induced by hate crimes.³⁸ There were 8,132 hate crimes

³⁵ Brandon Curtis, *When is it Justified to draw your firearm?*, CONCEALED NATION (last updated June 10, 2015), <http://concealednation.org/2014/05/when-is-it-justified-to-xdraw-your-firearm/>.

³⁶ *Hate Crimes*, TEX. DEPT. OF PUB. SAFETY 46 (2014), <http://dps.texas.gov/crimereports/14/citCh6.pdf>.

³⁷ *Id.*

³⁸ Mike Spies, *The Gun Doesn't Have to Go Off for It to Be a Hate Crime*, THE TRACE (Aug. 10, 2015), <http://www.thetrace.org/2015/08/hate-crimes-race-assault-data-guns/>.

reported between 2011 and 2013, of which 207 incidents involved guns.³⁹ Also, with terrorist attacks on the rise, there is another concern faced when distinguishing whether an act is one of terrorism or merely of a gun being in the wrong hands. Thus, this area of blurred lines adds to the fear and uncertainty that we as citizens have been facing in recent times.

While is it our right to protect ourselves, as provided by our U.S. Constitution and Texas' Constitution, we are humans who make mistakes. Aside from hate crimes, many people can be frightened and think that a person may be attacking them, when in reality there is no harm. In situations like these, a gun will be used and justified by believing there was imminent danger. No one can predict the judgment of the court in a case like this, as it is determined on a case-by-case basis. But no one can also save the innocent life lost in the process of allowing gun owning citizens to take the law in their hands, in order to protect themselves, due to a mistake they made.

Institutions like the University of Texas at Austin ("UT") experienced one of the nation's first campus mass shootings on August 1, 1966.⁴⁰ Now, exactly 50 years later UT will enact Campus-Carry with fear and caution.⁴¹ Fortunately, lawmakers have allowed university presidents to come up with regulations about Campus Carry.⁴² Yet, this will not prevent the fear many UT and other university students in Texas will feel when trying to obtain an education for themselves. In fact, many students believe that there is no need for guns on educational premises because the goal is simply to educate students.⁴³ There should be no need to feel unsafe and have to protect yourself with a gun on a college campus in the first place. Thus, since Campus Carry has yet to be

³⁹ *Id.*

⁴⁰ *The UT Tower Shooting*, TEX. MONTHLY, <http://www.texasmonthly.com/category/topics/ut-tower-shooting/> (last visited Jan. 7, 2016).

⁴¹ *Id.*

⁴² Jason Morris, *Texas figuring out how to handle Campus Carry law*, CNN (last updated Oct. 10, 2015, 11:16 AM), <http://www.cnn.com/2015/10/09/us/texas-campus-carry-law/>.

⁴³ *See id.*

enacted within schools, protests are in full force.⁴⁴ Students believe that guns on campus will disrupt the expression of ideas in classrooms.⁴⁵ Rather, a safe environment presents itself when there are no guns on campus. With Campus Carry, professors will face fear daily. Come August 2016, professors will have to think twice before failing a student or, worse, inviting the possibly disgruntled student to their office in an attempt to provide assistance.

Moreover, considering the increase of racism and hate crimes today, the power of openly placing guns in the hands of citizens in a *no duty to retreat* state, such as Texas, is frightening.⁴⁶ This is only a portion of the eye-opening topics to consider when preparing for the enactment of Open Carry.

B. The Self- Defense Phenomenon

There are always two sides to an issue. One positive look with guns is the benefit of self-defense. Texas is a castle doctrine state and follows a stand your ground clause.⁴⁷ Stand your ground in Texas means that there is *no duty* to retreat from a situation before using deadly force, while the castle doctrine is limited to the protection of real property such as homes, yards, and private offices..⁴⁸

Texas has been a castle doctrine state since 2007 and directly correlates to the legal force or deadly force someone can use for self-defense.⁴⁹ In addition, Texas became a no duty to retreat

⁴⁴ Carlos Garcia, *Hundreds March to State Capitol Protesting Campus Carry Legislation*, TWC NEWS (Jan. 8, 2016, 8:47 PM), <http://www.twcnews.com/tx/austin/news/2016/01/8/hundreds-march-to-state-capitol-protesting-campus-carry-legislation.html>.

⁴⁵ *Id.*

⁴⁶ Stephen Salas, *Texas' Stand Your Ground Law Explained*, KXII (Oct. 31, 2014, 11:43AM), <http://www.kxii.com/home/headlines/Texoma-Stand-Your-Ground-Law-281028012.html>.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ Patrick Michels, *Joe Horn and Five Years with the Texas Castle Doctrine*, TEX. OBSERVER (May 8, 2012, 7:29 PM), <http://www.texasobserver.org/joe-horn-and-castle-doctrine-shootings-in-texas/>.

state before using any force.⁵⁰ Gun owners often misunderstand this phenomenon. The benefit provides a sense of security that all persons living in their own homes should have by allowing them to shoot an intruder on their property as self-defense, but with limits.⁵¹ There must be “reasonable fear” of one’s life and the gun owner must not have provoked a confrontation.⁵² Ideally, this concept works while inside your own property. Many people will agree that if someone intrudes a home, fear and threat is normal. While outside with the general public, however, people do not get the benefit of that presumption. Currently, Open Carry leads to an issue of gun owning citizens misusing the benefit of a threatened presumption. As a consequence, “justifiable homicides” have been on the rise in Texas, since 2013.⁵³

In fact, the Journal of Preventive Medicine supports the idea that owning a gun does not lead to more safety.⁵⁴ Contrary to the argument made by gun advocates regarding increased sense of safety when having a gun, the National Crime Victimization Survey reveals that “having a gun provides no statistically significant benefit to a would-be victim” during a “threatening confrontation.”⁵⁵ Further, the study found that when guns were used for self-defense, “the likelihood of suffering an injury was 10.9 percent.”⁵⁶ Overall, there is little difference among injury rates when based upon any self-protecting action taken, whether by using a gun or any other weapon.⁵⁷ Therefore, these analyzed statistic seem to reveal that there is no obvious advantage to

⁵⁰ *Texas Castle Doctrine, Texas Castle Bill or Texas Castle Law*, http://www.rc123.com/texas_castle_doctrine.html (last visited Jan. 7, 2016).

⁵¹ Craig Kapitan, *Self-Defense laws in Texas have limits*, MY SAN ANTONIO (Mar. 23, 2012, 12:27AM), http://www.mysanantonio.com/news/local_news/article/Self-defense-laws-in-Texas-have-limits-3428715.php.

⁵² *Id.*

⁵³ Miles Graham, *When You can Kill in Texas*, TIME (June 13, 2013), <http://nation.time.com/2013/06/13/when-you-can-kill-in-texas/>.

⁵⁴ Evan Defilippis & Devi Hughes, *Gunfight or Flee: New Study Finds No Advantages to Using a Firearm in Self-Defense Situations*, THE TRACE (July 14, 2015), <http://www.thetrace.org/2015/07/defensive-gun-use-armed-with-reason-hemenway/>.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

using a gun. Rather, guns are used as a “threatening mechanism to intimidate far more often than they are used for self-defense.”⁵⁸ Factually, “defensive gun use is an inherently rare phenomenon.”⁵⁹

Therefore, while Open Carry brings with it the benefit of self-defense and comfort of overall safety, this phenomenon is not of a limitless use. More often than not, a person will not face a justifiable situation of threat while out in public. As such, Open Carry is of concern.⁶⁰ Again, we must decipher between our true fear from a society and any media caused fear of race, religion, and gender.

C. The Legality of Guns

The vast majority of gun owners in shootings or any other incident involving gun violence bought their weapons legally while also passing the federal background check.⁶¹ Gun control advocates are convinced that tougher gun laws will help prevent crime.⁶² Additionally, gun control laws are thought to be methods of protecting children and families.⁶³ This phenomenon stems from Moms Demand Action, a grassroots group founded in response to the Sandy Hook Elementary School shooting.⁶⁴ The idea is that since gun laws are being passed, stricter background checks will ensue for individuals that purchase guns. These background checks are amid the benefits of

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *See id.*

⁶¹ Larry Buchanan, *How They Got Their Guns*, NY TIMES (Dec. 3, 2015), http://www.nytimes.com/interactive/2015/10/03/us/how-mass-shooters-got-their-guns.html?_r=0 (last updated June 12, 2016).

⁶² Ariel Edwards-Levy, *Many Americans Want Stricter Gun Laws. Will it Matter?*, HUFFINGTON POST (Aug. 28, 2015, 5:35 PM), http://www.huffingtonpost.com/entry/roanoke-shooting-gun-poll_55e0ab28e4b0aec9f35329c0 (last updated Aug. 2015).

⁶³ Karen Ridder, *Gun Control Pros and Cons: 3 Points on Both Sides of Debate*, NEWS MAX (Sep. 28, 2014, 11:55 AM), <http://www.newsmax.com/FastFeatures/gun-control-pros-and-cons/2014/09/28/id/597212/>.

⁶⁴ *Id.*

Open Carry. Furthermore, background checks will help keep guns out of the hands of people that should not have them.

Yet, while groups such as Americans for Responsible Solutions advocate for background checks in order to prevent criminals, domestic abusers, and mentally ill persons from buying guns, there still remains loopholes and flaws. This concept, while ideal and realistic, is still only advocated for, rather than enforced, because guns are legally getting into the wrong hands. Unfortunately, in Texas there were 65,338 cases of aggravated assault in 2014.⁶⁵ Of these aggravated assault cases 24.2 percent involved firearms, which were legally obtained.⁶⁶ Therefore, while the background checks are met by gun owners and they do carry them legally, it still does not decrease the crime rates we have in Texas, nor make for a safer environment overall.

D. The Issue of Background Checks or Lack Thereof

As previously mentioned, current background checks will not suffice. They have not been as strict as they should be. Moreover, while there are many organizations advocating for mental checks, they alone cannot prevent the mental change a person may experience who has once passed the background check. Our mental health can change in an instant. No one can fully predict or vouch for a person being mentally capable of carrying a gun. As previously stated, many gun owners in previous shootings even obtained their weapons legally. Irony strikes when it was found that the shooters displayed mental health problems *before* setting out to kill, rather than after.⁶⁷ This fact alone promotes the need for stricter background checks before obtaining a gun.

⁶⁵ *Texas Crime Analysis*, DPS at 11, <http://dps.texas.gov/crimereports/14/citCh2Add.pdf> (last visited Sept. 24, 2016).

⁶⁶ *Id.*

⁶⁷ Mark Follman, Gavin Aronsen, & Deanna Pan, *A Guide to Mass Shootings in America*, MJ (Dec. 3, 2015, 4:15 PM), <http://www.motherjones.com/politics/2012/07/mass-shootings-map> (last updated July 18, 2016, 6:00 PM).

A recent example is the Roanoke, Virginia shooting where a reporter and cameraman were killed on live television.⁶⁸ The shooter, Vester Lee Flanagan II, had filed a lawsuit because he was fired and alleged to be a victim of racial slurs and bullying.⁶⁹ Flanagan had documented problems by his bosses for harsh language and aggressive behavior.⁷⁰ Federal officials found that Flanagan had purchased his gun legally from a licensed dealer and that he had never been convicted of a crime or found to be mentally ill.⁷¹ Yet, on August 26, 2015, Flanagan killed the reporter and cameraman before killing himself.⁷²

Flanagan's situation represents a prime example of how background checks are not enough. What did the reporter and cameraman do to Flanagan? Why did they have to be the victims of the anger and hate that was instilled in Flanagan from getting fired? And, if he was not mentally ill, why did he act the way he did? It is safe to say that even if at the time of his background check he was not mentally ill, people do change and can change. Once again, it takes the occurrence of one traumatic or anger provoking event for a person's mental state to change. Consequently, innocent lives were killed by a legally carrying, background-checked, gun owner.

i. The Gun Show Loophole

The overall issue of gun violence and citizens owning guns emanates from the convenient and easy methods of obtaining a handgun, perhaps at a gun show or even at big chain stores that supply hunting equipment. Since no permit is required to purchase a handgun at gun shows, but rather only to carry it, an unsafe environment is created. The rather controversial "gun show

⁶⁸ *Two WDBJ7 employees shot and killed; suspected shooter kills himself*, WDBJ 7 (Aug. 26, 2015, 7:27 AM), <http://www.wdbj7.com/news/local/law-enforcement-investigating-incident-at-bridgewater-plaza/34923086> [https://web.archive.org/web/20151102054349/http://www.wdbj7.com/news/local/law-enforcement-investigating-incident-at-bridgewater-plaza/34923086?item=0] (last updated Aug. 27, 2015).

⁶⁹ *Supra*, note 56.

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

loophole” allows certain sellers of guns “to avoid conducting background checks before making sales.”⁷³ President Obama is currently discussing options for tougher gun restrictions and will announce a new executive action to close the “gun show loophole”.⁷⁴ President Obama strives to expand background checks on the sale of guns in order to help decrease gun deaths in the United States.⁷⁵ Moreover, President Obama admits that he is aware “we can’t stop every act of violence, but what if we tried to stop even one? What if Congress did something... to protect our kids from gun violence?”⁷⁶ Currently, federal law only requires individuals that are “engaged in the business” of selling guns to have a license and conduct background checks, but the occasional selling of firearms from personal collections are exempt from background checks.⁷⁷ In today’s technologically advanced era, it is vital, necessary, and efficient to use background check data to keep guns out of the wrong hands. Gun lobbyists should embrace a security measure that is able to protect gun rights, rather than interfere with them. If these gun lobbyists succeed in embracing a security measure, there is a compromise between the safety of citizens and the protection of our Second Amendment rights. President Obama is currently working on creating safer and stricter measures for people to obtain guns, with a primary focus on providing those with serious mental illnesses with any needed treatment.⁷⁸

There remain many loopholes in the background check system. Thus, fail-safe background checks must be enforced to ensure that felons do not own guns, that people who have domestic violence history go through some kind of treatment, that mental health issues are top priority for checks when determining gun ownership, and lastly, that people who have been identified by

⁷³ Jim Acosta & Kevin Liptak, *Obama, Lynch to meet ahead of new executive action on guns*, CNN (Jan. 3, 2016, 1:56 PM), <http://www.cnn.com/2015/12/31/politics/obama-to-announce-new-executive-action-on-guns/>.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

security and United States intelligence are not permitted any access to guns through loopholes or even legally.

E. The Costs of Gun Violence

Next, the focus is on the cost of gun violence. Campus Carry is very much a part of the Open Carry Law and brings with it much concern from Julie Gavran, West Director of the Campaign to Keep Guns off Campus.⁷⁹ Now, since Campus Carry has been passed and will, begin in August 2016, colleges will have to invest more money for hiring security and buying metal detectors for their stadiums.⁸⁰ Consequently, money will be taken away from education. The statement seems to have accurate thought in that safety is still a key concern once Campus Carry passes. Come August 2016, security will be increased, even though this proposed law was created to help citizens feel safer. Considerably, the notion that armed students would make a campus safer is an illusion that will have a chilling effect on campus life for both students and professors.

A contradiction lies in the fact that the bill was created to allow concealed handgun licensed (CHL) citizens to protect themselves during situations in which they may feel unsafe. What happens to those citizens that do not have a concealed handgun license? Surely enough those lacking a concealed handgun license can simply obtain a license and then jump on the Open Carry bandwagon, but *only after* sixty days from the time the state receives the necessary completed materials.⁸¹ This time frame does not take into consideration the time it will take to register and take a training class.⁸² Considering the law is being passed for the purposes of safety and necessity, it seems like a rather long process for any new CHL members to be able to protect themselves.

⁷⁹ Lori Daniel, *Bill to allow guns on campus awaits Texas governor's signature*, CNN (June 1, 2015), <http://www.cnn.com/2015/06/01/us/texas-legislature-passes-campus-carry-guns/>.

⁸⁰ *Id.*

⁸¹ Russell Thurmon, *Frequently Asked Questions*, TEX. BEST CHL, <http://www.texasbestchl.com/faq.html> (last visited Dec. 31, 2015).

⁸² *Id.*

Either way, the effects of Campus Carry will cost many students an ideal education at the expense of costly and high security safety.

As mentioned above, the new Campus Carry Law soon to be enacted will necessitate the purchase of metal detectors and security for schools. Nevertheless, other costs also come from gun violence. Gun violence costs each American citizen more than 700 dollars per year.⁸³ Overall, the total costs of gun violence amounts to 229 billion dollars of which direct costs account for 8.6 billion dollars and indirect costs at 221 billion dollars.⁸⁴ Additionally, gun violence costs consists of the medical costs of anyone that has been injured from guns. Each year more than 11,000 people are murdered by a gun and more than 20,000 commit suicide using one.⁸⁵ In this instance, doctors have a view that it does not matter whether it is believed that guns kill people or that people kill others with guns, because either way it will be a public health crisis.⁸⁶ Essentially, every time someone is shot by a bullet, direct costs of emergency services, police investigations, and medical and mental health care costs ensue, followed by court and prison costs. Consequently, “about eighty-seven percent of these costs fall on taxpayers.”⁸⁷ As a result of Open Carry passing, costs of violence are at risk of increasing even more, thus burdening taxpayers.

There are also indirect costs associated with gun violence such as “lost income, losses to employers, and impact on the quality of life.”⁸⁸ To take costs of gun violence as a whole, understand that seventy percent of homicides occur with the use of guns.⁸⁹ Moreover, fifty percent of suicides involve guns in the United States.⁹⁰ More than eighty percent of suicide attempts with

⁸³ Mark Follman et al., *What Does Gun Violence Really Cost?*, MOTHER JONES (May 2015), <http://www.motherjones.com/politics/2015/04/true-cost-of-gun-violence-in-america>.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

a gun are successful.⁹¹ Each of the “deaths incurred by a gun averages to” about six million in total costs and every injury requiring hospitalization costs about 583 thousand dollars.⁹²

Adding these statistics to the overall seventy-three public mass shootings that we have had in the United States thus far, equates to an alarming amount.⁹³ We can only understand these related costs to be of those that could have been avoided had there been safer and stricter gun laws.⁹⁴

F. Guns Provide for Highest Deaths Rates

With the issue of mass shootings on the rise, it was determined that guns are America’s top killing machines. CBS News listed the top twenty states with the highest rates of death by gun.⁹⁵ The common denominator between the twenty states was that there was no permit required for the purchase of a handgun.⁹⁶ While Texas was not one of the top twenty states, it also does not require a permit to purchase a handgun.⁹⁷ According to the Center for Disease Control data of 2011, the most recent year for which the data is available, firearms killed 32,251 people in the United States.⁹⁸ Disturbingly, gun-related deaths are expected to surpass car accident deaths: “guns will kill more Americans under twenty-five than cars.”⁹⁹ These gun-related deaths include “suicides, homicides, accidental firearm discharges, and legal killings.”¹⁰⁰

⁹¹ *Id.*

⁹² Mark Follman et al., *What Does Gun Violence Really Cost?*, MOTHER JONES (May 2015), <http://www.motherjones.com/politics/2015/04/true-cost-of-gun-violence-in-america>.

⁹³ Mark Follman et al., *A Guide to Mass Shootings in America*, MJ (Dec. 3, 2015, 4:15 PM), <http://www.motherjones.com/politics/2012/07/mass-shootings-map>.

⁹⁴ *Id.*

⁹⁵ *Death by gun: top 20 states with highest rates*, CBS, <http://www.cbsnews.com/pictures/death-by-gun-top-20-states-with-highest-rates/1/> (last visited Jan. 4, 2016).

⁹⁶ *Id.*

⁹⁷ *Basic Texas Gun laws for Beginners*, DURYS GUNS, <http://www.durysguns.com/news/basic-texas-gun-laws-for-beginners> (last visited Jan. 4, 2016).

⁹⁸ Adrienne Lafrance, *America’s Top Killing Machine*, THE ATLANTIC (Jan. 12, 2015), <http://www.theatlantic.com/technology/archive/2015/01/americas-top-killing-machine/384440/>.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

III. AN ATTEMPT FOR PUTTING A NEW SYSTEM IN PLACE

Now that our Second Amendment rights are respected and in place, regulations are necessary. Gun violence is increasing and continuing to place these instruments in the wrong hands. Today, in fact currently, President Obama's new executive action has made an emotional yet humane call to stop gun violence in America. President Obama's goal is to "curb the epidemic of violence that's taking more than 33,000 American lives every year."¹⁰¹ While opposing citizens and parties believe that President Obama is encroaching Second Amendment rights, they are wrong.

In *United States v. Decastro*, it was established that "time, place, and manner restrictions" cannot impair the right to possess a gun for self-defense and can impose no burden on Second Amendment rights.¹⁰² With this established law, President Obama is within his power to declare executive action as there is no burden or impairing of Second Amendment rights through his desire for stricter background checks. Further, a law regulating the methods of obtaining guns does not exhibit itself as a burden on the right to keep and bear arms, considering that there are reasonable alternatives for law-abiding citizens to acquire guns for their protection. The system is set up to have citizens obtain a license by means of training before obtaining a gun, as is reasonable and necessary.

Yet, President Obama's initiatives for a safer method of obtaining guns are still strongly disfavored. In fact, it was ruled in *District of Columbia v. Heller* that Second Amendment rights are not unlimited and it is wrong to "keep and carry any weapon whatsoever in any manner... [and] doubt should not be cast on... prohibitions on possession of firearms by felons and the

¹⁰¹ Elizabeth Chan, *President Obama just took a big step to reduce gun violence—and showed what's at stake in the next election*, HILLARY CLINTON (Jan. 6, 2016), https://www.hillaryclinton.com/feed/president-obama-just-took-big-step-end-gun-violence/?utm_medium=social&utm_source=fb&utm_campaign=20151230feed_gv.

¹⁰² *United States v. Decastro*, 682 F.3d 160, 165 (2d Cir. 2012).

mentally ill.”¹⁰³ Thus, the privilege of having state regulated concealed carry was affirmed in the ruling of the *District of Columbia v. Heller* case.¹⁰⁴

If Second Amendment rights have an imposed any unreasonable burdens upon the rights of citizens, an intermediate scrutiny test is necessary. Under intermediate scrutiny, there must be a “reasonable fit between the challenged regulation and a substantial government objective.”¹⁰⁵ Furthermore, the government bears the burden of proving an important governmental end or interest and that the end or interest is “substantially served by enforcement” of the new regulation.¹⁰⁶ President Obama’s regulation meets the intermediate scrutiny test, and therefore does not require any challenge. President Obama is promoting gun safety measures by enforcing tougher background checks and dedicating new resources to increase mental health treatment. Essentially, President Obama strives to confront any issues before guns themselves become the issue. This executive action is a necessary means of stopping this continuing violent era.

IV. CONCLUSION

The effects of gun violence are increasing significantly. With the passing of Open Carry, citizens will be free to openly carry firearms in specified areas in public for protection. As represented by the news media, the tragedies of mass shootings and guns faced in the United States bring much concern and fear for many citizens. The fear people have of others essentially creates a world where gun owners are capable of taking the law in their hands to protect themselves, whether mentally stable or not, with legally or illegally obtained guns, and with or without a gun license. While living in a world filled with daily hate crimes motivated by race, gender, sexual

¹⁰³ *District of Columbia v. Heller*, 554 U.S. 570, 626-27 (2008).

¹⁰⁴ John Pierce, *Open Carry Laws Benefit Public Safety*, U.S. NEWS (Apr. 25, 2012, 4:09 PM), <http://www.usnews.com/debate-club/should-people-be-allowed-to-carry-guns-openly/open-carry-laws-benefit-public-safety>.

¹⁰⁵ *United States v. Carter*, 669 F.3d 411, 417 (4th Cir. 2012).

¹⁰⁶ *Id.*

orientation, or religion, we are only creating more of a fear for both the gun owner and those around him. Currently, the major issues of gun violence stem from the gun show loophole in which the status of a buyer remains unknown as it essentially allows people to buy guns without a license, promotes lenient background checks, and prevents those with mental health issues from being discovered in order to receive treatment. Therefore, this remains at issue considering the law specified that mental illness is a legitimate reason for prohibiting the sale of guns as is a felony background or illegal purchase of a gun.

Hence, there is a necessity for President Obama's new initiatives in order to create a fair and safe environment for using guns under Open Carry law. While case law is specific in establishing that we as citizens have our Second Amendment rights which cannot be imposed upon by any burden, there still remains controversy over the constitutional regulations created by the President for the right to bear arms.¹⁰⁷ What many citizens do not consider is that President Obama's executive actions are only a suggested "guidance for federal agencies, not binding regulations."¹⁰⁸

It is important as a nation to understand the consequences that come from guns and the possible effects of the newly enacted Open Carry law in Texas. The statistics of gun violence are uncanny. Hopefully, Open Carry will not increase these figures. The issue is that when there are guns, violence tends to follow. The idea should be that guns are used in a proper manner, which the Second Amendment and Texas Constitution specify this proper manner as protection. It is up to the gun owners to put aside their fears, mistakes, and bad judgment when using guns.

¹⁰⁷ Eric Lichtblau & Michael D. Shear, *Tearful Obama Outlines Steps to Curb Gun Deaths*, NY TIMES (Jan. 5, 2016), <http://www.nytimes.com/2016/01/06/us/politics/obama-gun-control-executive-action.html?ref=topics>.

¹⁰⁸ *Id.*

Unfortunately, history has not displayed guns in a pleasant light, and thus a change in regulation is required that does not impede on our Constitutional rights, in order to avoid a continuing violent era.

