2014

The Slow Evolution of Second Amendment Law

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I. INTRODUCTION

Since fall 2011, when the *Seattle University Law Review* first published my comment,[1] there have been an additional fourteen mass shootings in the United States.[2] Twelve of the shooters exhibited signs of men-tal illness that were observed by family, coworkers, or even mental health professionals.[3] Four of the mass shooters were undergoing or had undergone mental health treatment at some point in their lives, and one had been admitted to a psychiatric ward. Despite these warning signs, all but one of the shooters obtained their weapons legally. Most of the mass shootings occurred in public places, including one at a private university and another at an elementary school.[4]

After the Sandy Hook shooting left twenty children and six adults dead in their elementary school, there was public momentum to address gun violence and to do so as a public health issue.[5] The momentum was

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1. Joan H. Miller, *The Second Amendment Goes to College*, 35 SEATTLE U. L. REV. 235 (2011).

2. Mark Follman et al., *US Mass Shootings, 1982–2012: Data From Mother Jones' Investigation*, MOTHER JONES (Dec. 28, 2012), http://www.motherjones.com/politics/2012/12/mass-shootings-mother-jones-full-data. *Mother Jones* periodically updates its data to reflect mass shootings as they occur. The numbers cited in the accompanying text are current through September 16, 2013. *Id.* Although there is no official definition of "mass shooting," the Federal Bureau of Investigation describes mass murder as a single incident with four or more victims that usually occurs in a single location. U.S. DEP'T OF JUSTICE, FED. BUREAU OF INVESTIGATION, SERIAL MURDER: MULTI-DISCIPLINARY PERSPECTIVES FOR INVESTIGATORS (2005), *available at* http://www.fbi.gov/stats-services/publicatio ns/serial-murder/serial-murder-july-2008-pdf.

3. Although there is a correlation between mental illness and mass shootings, a discussion about mental health policy as it relates to firearm regulation is beyond the scope of this update.

4. Follman et al., *supra* note 2.

5. James Barron, *Gunman Massacres 20 Children at School in Connecticut; 28 Dead, Including Killer*, N.Y. TIMES, Dec. 15, 2012, at A1, *available at* http://www.nytimes.com/2012/12/15/nyregion/shooting-reported-at-connecticut-elementary-school.html.

short-lived. Although many politicians and scholars called for reinstating the federal assault-weapons ban, limiting the purchase of high-capacity magazines, or requiring background checks for firearms purchased at gun shows, Congress was unable to pass any meaningful gun control reform.[6] Similarly, state legislatures did not have the political will to tackle the issue, as only a handful of states passed gun control legislation in the wake of Sandy Hook.[7] Most states that did pass gun-related legislation actually made firearms easier to own, carry, and conceal.[8]

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6. *See, e.g.*, Leigh Ann Caldwell, *Obama Sets Up Gun Violence Task Force*, CBS NEWS (Dec. 19, 2012), http://www.cbsnews.com/8301-250_162-57560044/obama-sets-up-gun-violence-task-force/; Jennifer Steinhauer, *Senator Unveils Bill to Limit Semiautomatic Weapons*, N.Y. TIMES, Jan. 25, 2013, at A15, *available at* http://www.nytimes.com/2013/01/25/us/politics/senator-unveils-bill-to-limit-semiautomatic-arms.html; Jonathan Weisman, *Gun Control Drive Blocked in Senate; Obama, in Defeat, Sees 'Shameful Day,'* N.Y. TIMES, Apr. 18, 2013, at A1, *available at* http://www.nytimes.com/2013/04/18/us/politics/senate-obama-gun-control.html.

7. *See, e.g.*, H.B. 1224, 69th Gen. Assemb., Reg. Sess. (Colo. 2013) (prohibits the sale, transfer, or possession of large-capacity magazines); S.B. 1160, 2013 Gen. Assemb., Reg. Sess. (Conn. 2013) (expands the assault-weapons ban to include large-capacity magazines and armor-piercing bullets); H.B. 35, 147th Gen. Assemb., 2d Reg. Sess. (Del. 2013) (provides for a criminal history background check for the sale or transfer of firearms).

8. *See, e.g.*, S.B. 383, 2013 Leg., Reg. Sess. (Ala. 2013) (allows a local board of education to permit school security personnel to carry a firearm while on duty); H.B. 69, 28th Leg., 1st Reg. Sess. (Alaska 2013) (exempts certain firearms, accessories, and ammunition in the state from federal regulation); H.B. 2326, 51st Leg., 1st Reg. Sess. (Ariz. 2013) (prohibits political subdivisions of the state from requiring the licensing or registration of firearms); S.B. 389, 85th Gen. Assemb., Reg. Sess. (Iowa 2013) (allows a resident age eighteen or older to obtain a certificate of completion of the Hunter Safety and Ethics Education course without demonstrating the safe handling of a firearm); H.B. 0183, 98th Gen. Assemb., Reg. Sess. (Ill. 2013) (establishes a license for the concealed carry of firearms within Illinois); S.B. 102, 2013 Leg., Reg. Sess. (Kan. 2013) (exempts certain firearms, accessories, and ammunition in the state from federal regulation); S.B. 150, 2013 Leg., Reg. Sess. (Ky. 2013) (removes the length of residency requirement to a concealed carry license); H.B. 533, 97th Gen. Assemb., 1st Reg. Sess. (Mo. 2013) (requires the state to allow state employees to keep a firearm locked and concealed in their vehicles); H.B. 2, 2013 Leg., Reg. Sess. (Miss. 2013) (allows persons under twenty-one years of age to carry a concealed weapon if they are members or veterans of the armed forces); H.B. 1283, 63rd Leg., Reg. Sess. (N.D. 2013) (allows concealed carry permit holders to bring their firearms to public gatherings, including athletic or sporting events, schools, churches, or political rallies); S.B. 142, 108th Gen. Assemb., Reg. Sess. (Tenn. 2013) (allows a concealed carry permit holder to transport and store a firearm or ammunition in a vehicle located on public or private parking areas); H.B. 0006 108th Gen. Assemb., Reg. Sess. (Tenn. 2013) (authorizes the carrying of a firearm on school grounds by specified persons); S.B. 1907, 83rd Leg., Reg. Sess. (Tex. 2013) (prohibits higher education institutions from placing restrictions on the storage of firearms in the vehicles of concealed carry permit holders); H.B. 317, 2013 Leg., Reg. Sess. (Utah 2013) (prohibits the sharing of concealed firearm permit information with the federal government); H.B. 940, 2012 Gen. Assemb., Reg. Sess. (Va. 2012) (eliminates the prohibition on purchasing more than one handgun in a thirty-day period); H.B. 754, 2012 Gen. Assemb., Reg. Sess. (Va. 2012) (removes the option for a locality to require that concealed carry permit applicants submit fingerprints as part of the application); H.B. 375, 2012 Gen. Assemb., Reg. Sess. (Va. 2012) (prohibits localities from adopting a workplace rule that prevents an employee from storing a firearm and ammunition in a vehicle); H.B. 1582, 2013 Gen. Assemb., Reg. Sess. (Va. 2013) (allows armed security officers to carry firearms in private or religious schools; prohibits the Board of Social Services from adopting any regulations that would prevent a child daycare center from hiring an armed security officer).

In *The Second Amendment Goes to College*, I argued that "gun-free zones" on public college and university campuses are constitutionally permissible under strict scrutiny because the policy is narrowly tailored to achieve the compelling interests of academic freedom and public safety.[9] More specifically, I argued that the academic freedom doctrine, which is enshrined in the First Amendment, necessarily restricts state legislatures from interfering with the policy choices made by public colleges and universities.[10] When analogizing gun-free zones to time, manner, and place restrictions often imposed on the right to free speech in public places, I concluded that a college's interest in maintaining the free exchange of ideas and the collective security of its campus by prohibiting guns outweighs any individual right of self-defense on its premises.[11] Rather than reexamining these conclusions, this update will focus on the changes in Second Amendment law that have occurred over the past two years.

II. CASE LAW UPDATE

Since *District of Columbia v. Heller* and *McDonald v. Chicago*, Second Amendment jurisprudence has been slowly evolving, as lower courts grapple with how to analyze gun control regulations in the wake of the U.S. Supreme Court's holding that there is an individual right to keep and bear arms in self-defense of "hearth and home."[12] Neither case addressed the appropriate standard of review for lower courts to use. In my comment, I argued that although gun-free zones on college campuses would likely survive strict scrutiny, the appropriate standard of review should be intermediate scrutiny.[13] Since then, several appellate courts have reviewed regulations such as age-based handgun restrictions,[14] con-

9. Miller, *supra* note 1, at 238.

10. *Id.* at 263.

11. *Id.* at 251–52.

12. District of Columbia v. Heller, 554 U.S. 570, 635 (2008) (holding that law-abiding citizens have an individual right to keep and bear arms in self-defense of hearth and home); McDonald v. Chicago, 130 S. Ct. 3025, 3050 (2010) (incorporating the Second Amendment right recognized in *Heller* against the states through the Due Process Clause of the Fourteenth Amendment).

13. Miller, *supra* note 1, at 250. To survive intermediate scrutiny, the government must demonstrate that the challenged regulation is substantially related to furthering an important government interest. *Id.* at 253.

14. *See, e.g.*, NRA v. McCraw, 719 F.3d 338, 347–48 (5th Cir. 2013) (applying intermediate scrutiny to a Texas statute prohibiting eighteen- to twenty-year-olds from carrying firearms in public).

duct-based firearm restrictions,[15] and concealed carry permitting schemes[16] under intermediate scrutiny.

Recently, concealed carry permitting schemes and restrictions have been challenged as violative of the Second Amendment. Many lower courts now employ a two-pronged test to determine if a gun control regulation is constitutionally permissible: (1) whether the challenged law imposes a burden on conduct historically protected by the Second Amendment; and (2) if so, whether the law survives under some form of means-ends scrutiny.[17] If the challenged law does not fall within the scope of the Second Amendment, then the law is upheld and the analysis ends. If the law does implicate the Second Amendment, then courts must balance "the nature of the conduct being regulated and the degree to which the challenged law burdens the right"[18] to determine the appropriate level of means-ends scrutiny:

> A regulation that threatens a right at the core of the Second Amendment—for example, the right of a law-abiding, responsible adult to possess and use a handgun to defend his or her home and family—triggers strict scrutiny. A less severe regulation—a regulation that does not encroach on the core of the Second Amendment—requires a less demanding means-ends showing.[19]

Under this framework, there is currently a circuit court split as to whether the concealed carry of firearms even falls within the scope of the Second Amendment. For example, the Tenth Circuit U.S. Court of Appeals has held that the Second Amendment does not confer a right to carry a concealed weapon.[20] The court reasoned that *Heller* and *McDonald* held only that individuals have a right to keep and bear arms in self-

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15. *See, e.g.*, Schrader v. Holder, 704 F.3d 980, 989 (D.C. Cir. 2013) (analyzing 18 U.S.C. § 922(g)(1), which prohibits certain common-law misdemeanants from possessing firearms, under intermediate scrutiny).

16. *See, e.g.*, Drake v. Filko, 724 F.3d 426, 430 (3d Cir. 2013) (holding that a justifiable-need requirement for a concealed carry permit survives intermediate scrutiny); Woollard v. Gallagher, 712 F.3d 865, 876 (4th Cir. 2013) ("[T]he good-and-substantial-reason requirement passes constitutional muster under what we have deemed to be the applicable standard—intermediate scrutiny.").

17. *See, e.g.*, Peterson v. Martinez, 707 F.3d 1197, 1201 (10th Cir. 2013); United States v. Greeno, 679 F.3d 510, 518 (6th Cir. 2012); NRA v. BATFE, 700 F.3d 185, 194 (5th Cir. 2012); United States v. Chester, 628 F.3d 673, 680 (4th Cir. 2010); United States v. Marzzarella, 614 F.3d 85, 89–90 (3d Cir. 2010).

18. *BATFE*, 700 F.3d at 194 (quoting *Chester*, 628 F.3d at 682).

19. *Id.* at 195 (citing *Chester*, 628 F.3d at 682). Intermediate scrutiny is an example of a less demanding means-ends showing, which is generally the standard of review courts use to analyze regulations that do not implicate the core right of the Second Amendment. *See, e.g.*, *id.* at 195–96.

20. *Peterson*, 707 F.3d at 1201 ("In light of our nation's extensive practice of restricting citizens' freedom to carry firearms in a concealed manner, we hold that this activity does not fall within the scope of the Second Amendment's protections.").

defense of hearth and home.[21] This right does not extend to the carrying of weapons in public places, and therefore, concealed carry permitting schemes regulate conduct that does not implicate the Second Amendment.[22] The Seventh Circuit U.S. Court of Appeals, on the other hand, held that there was no question that concealed carry laws fall within the scope of the Second Amendment because, rather than implicating that the right does not extend outside the home, *Heller* and *McDonald* found only that the need for self-defense is "*most* acute in the home."[23]

In many cases, however, lower courts have chosen to avoid deciding the constitutional issue under the first prong and instead proceed with analyzing the standard of review.[24] For example, most courts agree that it is constitutionally permissible for a state to deny a concealed carry permit to convicted felons or domestic violence misdemeanants.[25] There is a strong consensus that this type of regulation furthers a state's significant interest in keeping deadly weapons from individuals who have proven to be violent, and many courts have upheld these types of laws without answering the constitutional questions.[26] Additionally, justifiable-need standards, which determine whether a concealed carry permit may be issued to a particular individual,[27] have survived intermediate scrutiny,

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21. *Id.*

22. *Id.*

23. Moore v. Madigan, 702 F.3d 933, 935, 937 (7th Cir. 2013) ("To confine the right to be armed to the home is to divorce the Second Amendment from the right of self-defense described in *Heller* and *McDonald*.").

24. *See, e.g.*, Drake v. Filko, 724 F.3d 426, 430 (3d Cir. 2013) ("It remains unsettled whether the individual right to bear arms for the purpose of self-defense extends beyond the home."); United States v. Mahin, 668 F.3d 119 (4th Cir. 2012) ("The Supreme Court has not clarified, and we have not held, that the Second Amendment extends beyond the home."); Hightower v. Boston, 693 F.3d 61, 72 n.8 (1st Cir. 2012) ("We do not reach the issue of the scope of the Second Amendment as to carrying firearms outside the vicinity of the home without any reference to protection of the home.").

25. *See, e.g.*, Schrader v. Holder, 704 F.3d 980, 989 (D.C. Cir. 2013); United States v. Armstrong, 706 F.3d 1, 8 (1st Cir. 2013); *Mahin*, 668 F.3d at 123–24.

26. *See, e.g.*, *Mahin*, 668 F.3d at 123–24.

27. This standard generally requires applicants for a concealed carry permit to demonstrate that they have a special need for self-defense in public places that is distinguishable from the general community's need. *See* Kachalsky v. County of Westchester, 701 F.3d 81, 86 (2d Cir. 2012) ("To establish proper cause to obtain a license . . . an applicant must demonstrate a special need for self-protection distinguishable from that of the general community or of persons engaged in the same profession. [] Unlike a license for target shooting or hunting, a generalized desire to carry a concealed weapon to protect one's person and property does not constitute proper cause." (internal citations and quotation marks omitted)); *In re* Preis, 573 A.2d 148, 152 (1990) ("[T]here must be an urgent necessity [] for self-protection. The requirement is of specific threats or previous attacks demonstrating a special danger to the applicant's life that cannot be avoided by other means. Generalized fears for personal safety are inadequate." (internal citations and quotation marks omitted)).

There are a handful of states that require applicants to demonstrate a justifiable need. *See, e.g.*, MD. CODE ANN., PUB. SAFETY § 5-306(a)(6)(ii) (2013) ("[The applicant] has good and substantial reason to wear, carry, or transport a handgun, such as a finding that the permit is necessary as a reasonable precaution against apprehended danger."); N.J. STAT. § 2C:58-4(c) (2013) ("No applica-

even when the court has punted on the question of whether the concealed carry of firearms in public places is conduct protected by the Second Amendment.[28] These courts have argued that, in the alternative, even if the right does extend to public places, a justifiable-need standard for issuing permits is a long-standing regulation that enjoys presumptive constitutionality under *Heller*.[29] The Seventh Circuit expressed only in dicta that a justifiable-need standard would likely survive constitutional scrutiny.[30] The court, however, did explicitly declare that a blanket prohibition on carrying guns in public would be a substantial curtailment of the right to bear arms in self-defense.[31] Accordingly, it did not base its analysis on degrees of scrutiny because the Illinois statute was an effective ban on the concealed carrying of firearms in public.[32] Instead, the court held that the State did not meet its burden of showing that it had more than a rational basis for the sweeping ban and thus found the law unconstitutional.[33]

While several courts have addressed the constitutionality of carrying concealed firearms in public, my theory under the academic freedom doctrine remains unanswered.[34]

III. CARRYING ON CAMPUS TRENDS

Although higher education institutions prefer to keep weapons off their campuses, state legislatures continue to influence the policy decisions of public colleges and universities. In 2011, Utah was the only state that did not give its public colleges and universities the statutory authori-

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tion shall be approved . . . unless the applicant demonstrates . . . that he has a justifiable need to carry a handgun."); N.Y. CLS PENAL § 400.00(2)(f) (2013) ("A license . . . shall be issued to . . . have and carry concealed, without regard to employment or place of possession, by any person when proper cause exists for the issuance thereof.").

28. *See, e.g.*, Woollard v. Gallagher, 712 F.3d 865, 876 (4th Cir. 2013) ("[W]e merely assume that the *Heller* right exists outside the home and that such right of Appellee Woollard has been infringed. We are free to make that assumption because the good-and-substantial-reason requirement passes constitutional muster under . . . intermediate scrutiny.").

29. Drake v. Filko, 724 F.3d 426, 430, 433 (3d Cir. 2013) ("The 'justifiable need' standard fits comfortably within the longstanding tradition of regulating the public carrying of weapons for self-defense. [] We conclude that even if the 'justifiable need' standard did not qualify as a 'presumptively lawful,' 'longstanding' regulation, . . . it would withstand intermediate scrutiny, providing a second, independent basis for concluding that the standard is constitutional.").

30. Moore v. Madigan, F.3d 933, 941 (7th Cir. 2013).

31. *Id.* at 940.

32. *Id.* at 941.

33. *Id.* at 942.

34. *See also* 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, 9 (2011).

ty to prohibit or restrict firearms on their campuses.[35] Today, seven states have statutes or case law abolishing all or some of this authority: Colorado,[36] Kansas,[37] Michigan,[38] Mississippi,[39] Oregon,[40] Utah,[41] and Wisconsin.[42] Twenty-one states continue to prohibit firearms, whether concealed or not, on public college and university campuses: Arkansas, California, Florida, Georgia, Illinois, Louisiana, Massachusetts, Missouri, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, South Carolina, Tennessee, Texas, and Wyoming.[43] Twenty-two states allow their public colleges and universities to

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35. Miller, *supra* note 1, at 244–45; *see also* Univ. of Utah v. Shurtleff, 144 P.3d 1109 (Utah 2006).

36. The Colorado Supreme Court held that the Colorado Board of Regents did not have the authority to ban concealed carry permit holders from bringing guns onto its public campuses. Students for Concealed Carry on Campus v. Univ. of Colo., 271 P.3d 496, 501, 502 (Colo. 2012) ("[W]e hold that the CCA divested the Board of Regents of its authority to regulate concealed handgun possession on campus.").

37. *See infra* text accompanying notes 49–50.

38. Michigan law allows concealed carry permit holders to carry firearms on campuses, but weapons may not be carried inside classrooms or dormitories. MICH. COMP. LAWS § 28.425o(h) (2012).

39. In Mississippi, the legislature passed a bill prohibiting colleges and universities from banning weapons for concealed carry permit holders who have completed a voluntary "enhanced" training program. H.B. 506, 2011 Leg., Reg. Sess. (Miss. 2011). Because of uncertainties in the statutory language, many post-secondary schools in Mississippi continue to ban firearms in dormitories, dining halls, and event centers.

40. In 2011, an Oregon Court of Appeals held that public state colleges and universities do not have the authority to ban weapons on the physical grounds of a campus. Or. Firearms Educ. Found. v. Bd. of Higher Educ., 264 P.3d 160, 165 (Or. Ct. App. 2011). But each school does have discretion to prohibit concealed weapons inside buildings, dormitories, event centers, and classrooms. *Id.* at 162. Although the Oregon University System chose not to appeal the decision due to the associated costs, the Oregon Higher Education Board voted unanimously to ban weapons inside all buildings of the seven public colleges and universities in the state. Bill Graves, *Oregon State Board of Higher Education Resorts to Policy to Ban Guns on Campus*, OREGONIAN (Mar. 2, 2012), http://www.oregonlive.com/education/index.ssf/2012/03/oregon_state_board_of_higher_e_7.html.

41. UTAH CODE ANN. § 53B-3-103(2) (2007). In Utah, students may request that they be paired with a dormitory roommate who does not have a concealed carry weapon permit. *Id.* Private hearing rooms on campus have been designated as "secure areas" where firearms may be restricted by the college. *Id.*

42. In 2011, Wisconsin was one of only two states that prohibited the carrying of concealed weapons altogether. That same year, the legislature passed Senate Bill 93, which made significant changes to gun control law in the state of Wisconsin, including allowing the concealed carry of firearms on the campuses of public colleges and universities. S.B. 93, 2011 Leg., Reg. Sess. (Wis. 2011). The bill includes a provision that allows post-secondary institutions to prohibit concealed weapons from campus buildings if appropriate signage is posted at every entrance. *Id.* "All University of Wisconsin system campuses and technical community college districts are said to be putting this signage in place." *Guns on Campus: Overview*, NAT'L CONF. ST. LEGISLATURES, http://www.ncsl.org/research/education/guns-on-campus-overview.aspx (last updated January 2014), [hereinafter NCSL].

43. The respective state laws are as follows: ARK. CODE ANN. § 5-73-119(c)(1) (2013); CAL. PENAL CODE § 626.9 (1995); FLA. STAT. § 790.06(12) (2013); GA. CODE ANN. § 16-11-127.1(b) (2011); H.B. 0183, 98th Gen. Assemb., Reg. Sess. (Ill. 2013); LA. REV. STAT. §§ 14:95.2, 14:95.6

independently determine gun policy on campus: Alabama, Alaska, Arizona, Connecticut, Delaware, Hawaii, Idaho, Indiana, Iowa, Kentucky, Maine, Maryland, Minnesota, Montana, New Hampshire, Pennsylvania, Rhode Island, South Dakota, Vermont, Virginia, Washington, and West Virginia.[44] Of all the two-year and four-year post-secondary schools in these states, only eight have established policies that allow concealed firearms to be carried on all or portions of their campuses.[45] A handful of states continue to allow gun-free zones on campuses but provide an exception for firearms stored in locked vehicles on campus parking lots: Kentucky, Minnesota, Nebraska, North Carolina, Ohio, Oklahoma, South Carolina, Tennessee, and Texas.[46]

Finally, both Arkansas and Kansas passed legislation in 2013 that may signal a shift in policy responses to the issue of guns on campus. The Arkansas legislature passed a bill that permits faculty to carry weapons but allows schools to opt out of this policy annually.[47] To date, every post-secondary school in Arkansas has exercised its right to opt out.[48] In Kansas, public colleges and universities may not establish gun-free

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(2013); MASS. GEN. LAWS ch. 269, § 10(j) (2012); MO. CODE REGS. ANN. tit. 6, § 250-4.010(10); NEB. REV. STAT. § 28-1204.04(1) (2011); NEV. REV. STAT. § 202.3673(3)(a) (2011), N.J. STAT. ANN. § 2C:39-5e(1) (1997); N.M. STAT. ANN. § 30-7-2.4(A), (C)(1) (2011); N.Y. PENAL LAW §§ 265.01(3), 265.01-a (2012); N.C. GEN. STAT. § 14-269.2(b) (2011); N.D. CENT. CODE § 62.1-02-05 (2013); OHIO REV. CODE ANN. § 2923.126(B)(5) (2013); OKLA. STAT. tit. 21, § 1277(E) (2009); S.C. CODE ANN. § 16-23-420(A) (2009); TENN. CODE ANN. § 39-17-1309(c)(1) (1996); TEX. PENAL CODE ANN. § 46.03(1) (2003); and WYO. STAT. ANN. § 6-8-104(t)(x) (2013).

44. NCSL, *supra* note 42.

45. In Virginia, Liberty University, a private institution, allows any permit holder to carry a concealed weapon on campus. LIBERTY UNIVERSITY WEAPONS POLICY, §§ (3)(C),(D) & (E), *available at* http://www.liberty.edu/media/1370/Weapons_Policy_Revision_1.pdf. Old Dominion University, a public institution, allows only visitors with a concealed carry permit to possess a firearm on campus; the policy prohibits students or faculty from carrying a concealed weapon, regardless of permit status. FIREARMS, WEAPONS, AND CERTAIN RELATED DEVICES, NO. 1013, at 1, *available at* http://www.odu.edu/content/dam/odu/offices/bov/policies/1000/BOV1013.pdf. There are six public colleges or universities in Pennsylvania that allow concealed carry in some form: California University, Edinboro University, Lockhaven University, and Millersville University allow concealed carry permit holders to carry firearms in open spaces, but they may not bring them into buildings or sporting events; Kutztown University and Slippery Rock University require concealed carry permit holders to obtain permission from the institution to bring a weapon onto campus. *Laws Concerning Carrying Concealed Firearms on Campus in Pennsylvania*, ARMED CAMPUSES, http://www.armedcampuses.org/pennsylvania/ (last visited Jan. 2, 2014) [hereinafter ARMED CAMPUSES].

46. The respective state laws or case law are as follows: Mitchell v. Univ. of Ky., 366 S.W.3d 895 (Ky. 2012); MINN. STAT. § 624.714, subd. 18(c); NEB. REV. STAT. § 28-1204.04(1) (2011); H.B 937, 2013 Gen. Assemb., Reg. Sess. (N.C. 2013); S.C. CODE ANN. § 16-23-420(A), 16-23-430(B) (2009); OHIO REV. CODE ANN. § 2923.126(B)(5) (2013); OKLA. STAT. ANN. tit. 21 § 1277(E)(1) (2009); TENN. CODE ANN. § 39-17-1309(c)(1) (1996) (only nonstudents may store a firearm in their vehicle); and S.B. 1907, 83rd Leg., Reg. Sess. (Tex. 2013).

47. H.B. 1243, 89th Gen. Assemb., Reg. Sess. (Ark. 2013).

48. ARMED CAMPUSES, *supra* note 45.

zones, unless adequate security measures are in place.[49] Schools may, however, request an exemption for up to four years.[50] These statutes are novel policy responses in that they either allow only a certain class of persons to carry guns on campus (e.g., school faculty) or require the educational institution to take an affirmative action to reduce the public's need for self-defense on its campus.

IV. CONCLUSION

As of 2013, all fifty states now allow the concealed carry of firearms under certain circumstances. Circuit courts continue to analyze the proper scope of the Second Amendment as it applies to public places, with intermediate scrutiny emerging as the dominant standard of review for laws that do not implicate the core right of self-defense in the home. The overwhelming majority of colleges and universities in this country support gun-free zones on their campuses, even for individuals with a concealed carry permit. They feel strongly that a change in this policy would not be in the best interests of their students. Despite their expertise in creating environments conducive to learning and to the free exchange of ideas, state legislatures continue to pass laws that make it harder for schools (and other localities) to determine who may carry a gun and where it may be carried.

49. H.B. 2052, 2013 Leg., Reg. Sess. (Kan. 2013). At least one author has advocated for this approach. *See* Brian C. Whitman, Comment, *In Defense of Self-Defense:* Heller*'s Second Amendment in Sensitive Places*, 7 MISS. L.J. 1987 (2012).

50. H.B. 2052. Kansas also allows firearms in K–12 schools. *Id.*