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Not Chilly Enough? Texas Campus Carry and Academic Freedom

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Abstract

The Texas campus carry law (S.B. 11) intentionally went into effect on the fiftieth anniversary of the Tower shooting at the University of Texas at Austin while the campus and the state mourned the long-ago loss of life. S.B. 11 legalized the carry of concealed handguns with a chambered round by licensed permit holders in most academic, administrative, and residential spaces, including most classrooms and many offices, at public colleges and universities. Reaction was quick, especially on the UT-Austin campus. Gun-free UT rallied with the slogan “Armed with Reason”; students joined a “Cocks Not Glocks” rally that received worldwide publicity; and three UT faculty members filed suit in federal district court. In this article, we discuss the history and background of the Texas law, the reactions of faculty members, and the two court decisions. We also suggest that more faculty data will bolster future court challenges to campus carry.

The first mass shooting on a college campus occurred at the University of Texas at Austin on August 1, 1966, killing sixteen and wounding thirty-one others. Exactly fifty years later the Texas campus carry law went into effect at all four-year public universities. The law legalized the carry of concealed handguns with a chambered round by licensed permit holders in most academic, administrative, and many residential spaces, including most classrooms and some offices, at public colleges and universities.¹ Refusal to follow the law results in fines plus disciplinary action by the university. Faculty have expressed serious concerns that concealed firearms in academic buildings and classrooms could chill free speech and academic freedom. The already-marginalized LGBTQ+, African American, Latinx, Asian American, Native American, female, and

disabled faculty face particular scrutiny on campus and have expressed concern that the law places an even larger target on their backs. This article discusses Texas campus carry, provides faculty views on the legislation, and presents the findings from a lawsuit filed by UT-Austin faculty. We end with suggestions on how additional faculty data can arm us for future legal challenges to guns on campus.

The Law

To understand how gun laws have changed in the last fifteen years and the impact on college campuses, a short discussion of court cases is necessary. Two key US Supreme Court cases radically changed the legal interpretation for the carrying of guns. *Heller v. District of Columbia* reversed decades of case law that limited the carrying of guns on college campuses.² *Heller*, which vexingly relied on case law from the nineteenth century, granted the right of individuals to keep and bear arms in their homes or apartments. *McDonald v. City of Chicago* provided the framework for state and local governments to regulate the carrying of guns.³ In concert, the two cases overturned limitations on gun possession imposed by governments at state, federal, and local levels but failed to establish a standard of review for when and where carrying a firearm is permissible. While *Heller* upheld the “reasonable” restriction of guns in sensitive areas such as schools, churches, and so forth, the court never elaborated on what is reasonable. *Heller* and *McDonald* set the stage for eventual challenges to bans on firearms in these sensitive venues. Because of these precedents, the possession of firearms at public universities is assumed to be a fundamental right protected by the Second Amendment and bans thereto are subject to strict scrutiny by the courts.

With the state and federal restrictions struck down, similar restrictions on specific venues, especially state colleges and universities, seemed comparably illegal to Second Amendment absolutists. What courts, legislators, and gun advocates failed to recognize, however, was the potential for campus carry on previously gun-free campuses to influence and infringe upon the academic freedom of those who teach, work, visit, or study at these institutions. The Second Amendment says that the “right of the people to keep and bear arms shall not be infringed.” However, opponents of campus carry argue that the presence of guns on campus creates an environment hostile to teaching, research, and learning and thus “chills” academic freedom and free speech under the First Amendment.

The implementation of campus carry has added a new dimension to the chilling of academic freedom. Campuses are marketplaces of ideas, and inserting guns into this academic space can stifle the creativity, open dialogue, and free inquiry of students and faculty. Faculty and students who produce controversial,

challenging research may refrain from performing and discussing their research for fear of armed students who disagree.

For their part, the gun lobby and gun advocates have fiercely promoted campus concealed carry, open carry, and “constitutional carry” (which permits the carrying of guns with *no* restrictions or licensing requirements). Two recent incidents that occurred after the passage of both campus carry and open carry laws illustrate the determination of gun advocates to flex their collective muscle. During a gun rights rally at the state capitol, groups of gun owners roamed the halls in search of legislators opposing “constitutional carry.” One group descended on a senator’s office and refused to leave. One member of the group said that, if necessary, the “blood of patriots” would be spilled during the debate over gun legislation, with the implication that it would happen that day in that senator’s office.⁴ Another group visited a representative’s office, calling him a traitor and demanding that he be run out of office. The second incident occurred during the shooting of police officers in downtown Dallas. A few gun advocates claiming to be “sovereign citizens” strapped on their automatic weapons (permissible under the open carry law in Texas) and went to the site of the shooting, intent on asserting their Second Amendment rights. In the ensuing chaos, one of the gun advocates was thought to be a shooter.⁵

Prompted by the National Rifle Association’s slogan, “The only way to stop a bad guy with a gun is a good guy with a gun,” many state legislatures adopted campus carry laws. Texas was the eighth state to do so. The Texas campus carry law (S.B. 11) enables concealed license holders (CHLs) to carry loaded and concealed weapons on public college and university campuses. The CHL must go through six hours of training and be at least twenty-one years of age. The latter means that traditional first-year, sophomore, and junior students under age twenty-one cannot obtain a license (unless they are veterans). While the age restriction reduces the number of CHLs on many campuses, seniors, graduate and professional students, faculty, staff, and visitors with a license can bring a gun to campus.

Ironically, the National Rifle Association (NRA) has traditionally opposed guns in academic areas. In 1999, the NRA’s executive director, Wayne LaPierre, advocated an “absolutely gun-free, zero-tolerance, totally safe schools” policy. Two other groups have championed and shaped campus carry, while pushing the NRA toward a more hardline stance in which gun rights “shall not be infringed” in any way. The Gun Owners of American (GOA) and the Leadership Institute (LI) funneled money and staff support into “stand your ground laws,” open carry, campus carry, and “constitutional” (permitless) carry. By 2015, the GOA and LI had created Students for Campus Carry (SCC) groups at 350 campuses, including the University of Texas at Austin.

The anti-campus carry forces took a dual approach. Moms Demand Action and Everytown for Gun Safety supported the formation of faculty and student resistance on college campuses in Texas and organized testimony presented during legislative hearings on campus carry (as well as other types of gun legislation). The Texas state AAUP conference, the Texas Association of College Teachers, and other groups also testified at every hearing on campus carry legislation. The University of Texas at Austin has a Students Against Campus Carry group and Gun-Free UT, an umbrella organization that helped launch the faculty lawsuit against S.B. 11.

Colleges and universities were given the authority to ban guns in “sensitive areas and buildings” and set some rules. However, the law was specific that any rules that “generally prohibit or have the effect of generally prohibiting” campus carry would not be permitted. The sensitive areas exemption generally applies to laboratories with hazardous chemicals, areas serving individuals under the age of eighteen (such as early college high schools or day care centers), and research labs doing certain types of federal research. General academic buildings, including classrooms, are not exempt from the law and no such blanket exemptions are permitted under the law.

Community colleges were given an extra year to comply with the law due to their unique mission and population. Most of the community colleges in the state host an early college high school (ECHS) serving students under the age of eighteen. Classrooms for ECHS students are exempt, but classes with only a few students under the age of eighteen are not. Certain workforce training settings in community colleges can be exempt. At Austin Community College, for example, student CHLs cannot have guns on their person when working under a car in the auto mechanics program or on a roof in the construction program.

The Texas law applies to all public universities and grants few exceptions. During the implementation process, sponsors of the campus carry legislation proclaimed that if universities had broad exceptions, the law would be amended to limit exceptions. Between the legislature’s surveillance of the implementation, the fines for violating the law, and university disciplinary action for infractions, faculty have little recourse.

Faculty Interviews

We interviewed about 140 faculty members, more than half of them women, about campus carry and assigned a pseudonym to each person.⁶ In this article, we briefly report on general safety and political concerns but focus on academic freedom in teaching and research.

Shortly before campus carry was implemented in August 2016, one faculty member posted to Facebook that she was not talking with colleagues about research, vacations, or classes. Rather, they were discussing issues such as the “difference between a loaded weapon and chambered round,” “the difference between prohibiting and discouraging weapons in the classroom,” and mourning the loss of academic freedom and faculty governance. These themes dominated our discussions with faculty members.

In general, the faculty felt safe on campus during the day. They had significant concerns about being on campus on evenings and weekends, the area west of campus, and the parking garages at the periphery of campus. Many of the general comments about safety were punctuated by references to violent incidents on campus: the Tower shooting, the student armed with an automatic weapon who rode a city bus to campus and shot up a street before committing suicide, a woman student who was killed on campus, a security guard shot at an off-campus fraternity party, and the stabbing of four students, one of whom died in the middle of campus one bright spring afternoon. As the participants related these scenarios we could visualize these “flashbulb” memories perfectly.

Four faculty members talked about the concept of duck and cover when a gun is drawn in a classroom. Cindy asked, “How do we duck and cover? How do you talk down somebody who does pull a weapon in your seminar?” Three disabled faculty members said they were physically unable to duck and cover. One of them was hearing impaired and couldn’t hear warning signals. None had been advised by the university about accommodating their disabilities during an active shooter scenario.

Academic Freedom

The AAUP’s *1940 Statement on Principles of Academic Freedom and Tenure* provides a clear definition of academic freedom as giving professors the freedom to research and teach in their academic disciplines without interference. Citing *Sweezy*⁷ (1957), Richard Hiers noted, “The [US Supreme] Court clearly understood that academic freedom . . . was grounded upon the First Amendment.”⁸

The faculty members we interviewed described academic freedom in various ways. Susan succinctly defined academic freedom as “the foundation of everything,” stating that she was “very adamant about the significance of academic freedom” in her work as a scholar and a teacher. Alice spoke of the importance of academic freedom in the classroom: “Academic freedom is being able to express differences in a safe environment where people learn that just because it’s . . . not what they believe, it is not unethical or immoral, and that they understand you can be ethical and still disagree.” Jim focused more on the overall importance of

academic freedom for the mission of the university, defining it as “essential for the university. If the university is a place for creating knowledge, for inventing ourselves as human beings, for open growth, open new ideas, we need that freedom so bad.” For those participants who teach controversial subjects or engage in controversial research, academic freedom was very important. Elaine pointed to the legislature as limiting her academic freedom:

The legislature might have thought it’s their right to support the gun-carrying rights of citizens of Texas, but I feel like it’s my right to have a safe and non-anxiety inducing work environment, and that includes my classroom as well as my office. . . . I do think campus carry will have a chilling effect on both controversial research and teaching of controversial topics. There are courses on this campus devoted only to difficult dialogues. That’s what this campus should be doing. . . I can imagine people being much more hesitant to conduct such really important conversations. And it might not even be that they don’t do it, but just raising people’s blood pressure, while they do something that’s really important, seems to me wrong, and the institution should not be doing it. I mean, increasing the anxiety level of people who are doing really important work, both academically and scholarly, I think is just wrong.

Sondra felt she could not dispute the dominant narrative of the Texas gun culture: “I didn’t want to push much. I’m on a tenure track and idealistic . . . so I didn’t push much. But I guess there are some staff and faculty here who are carrying guns. . . . I don’t understand that, but that is how it is here. . . . I don’t know [what I can say or do to disagree].”

Art, an LGBT+ faculty member, has a research agenda investigating “very contemporary questions that are very controversial that a lot of people don’t want to hear,” and he is not changing his research because of campus carry. He was told, “Fag, hell, go to hell” because of his scholarly work but is still pursuing this research stream.

Susan reported the kind of self-censorship that freezes, not chills, speech in the classroom: “We’ve had some conversations with other junior faculty and they’ve said. . . . I don’t think I can have a decent conversation with a gun in the room, period. So, if that’s gonna happen then my quality of instruction is gonna really drop down; I’m not gonna give my best . . . [If] that is the sacrifice of the compromise to be able to carry guns . . . that’s just how it is. But I’m trying to minimize it by moving most of my classes online.”

Suki had been assaulted and feared flashbacks during class. Knowing that students may be armed in her classes, she said, “Yeah, it wouldn’t be comfortable for me. . . . I was a victim of an assault and so maybe that’s why I [cried during this interview]. It’s not comfortable for me to teach in that kind of situation. It’s been a couple of years but I never know if I’m going to cry about it.”

Patsy indicated that students’ academic freedom could also be chilled by guns in the classroom, especially as the semester wears on: “I’m also worried about the point of view of the other students, because they will worry about other students carrying [guns], particularly when we get towards the end of the semester, when stress levels become very high.”

Two faculty members outlined different approaches to classroom discourse. Sarah said, “So, I’m gonna really keep it very benign, not push them and just keep it very safe. . . . What kind of message is this sending? We are not a hunting ground. This is a classroom!” By contrast, the more activist Janet commented, “I’m going to keep doing what I think I need to do. . . . I can control staying true to what I think my class needs to stand for. . . . I will still fail a student if they need to be failed. I’m not going to make up grades for people. I have heard of professors planning to do that. . . . I decided that I just can’t—I am not going to live in fear . . . and make changes to avoid something you can’t really avoid.”

Following the implementation of campus carry, John noticed a change in how he structures and guides classroom discussions: “I found myself pulling back more and more from what I would commit to talk about or do. And my whole mindset was ‘just don’t escalate.’” For him this meant modifying his freedom to discuss controversial topics with his students.

In contrast, Ellen, like Janet, made a commitment to avoid modifying how she teaches. “I have made an active decision to never temper what I teach no matter the conditions.” She added that any changes in her teaching may be subconscious, “I think that is part of the plan of rolling [campus carry] out—to make subtle changes you wouldn’t have thought about otherwise.” Alex also chose not to modify his teaching: “I do not have the feeling that I have to fear a student who [doesn’t agree with me] will rise and do whatever type of violence against me.” For him, choosing to modify his teaching is unnecessary because he does not feel threatened by campus carry.

The potential effect of campus carry on interactions with students is less clear. Edward changed the venue for his meetings with students, “I don’t have office hours in my office any more. I don’t feel safe. I go into a public place where there are no firearms allowed.” For others, however, the issue of how to approach one-on-one interactions with students is based on past experiences and theoretical scenarios. Molly observed,

“I have students in here who are having challenges in the field, and I have had angry students who I knew who were familiar with guns who part of the reason they were in my office was because they were threatening people with guns. That was nerve-wracking.”

Elizabeth feared candid conversations with students about their academic performance: “When I have to tell a student, ‘You’re not meeting the objective and you’re in danger of failing the course,’ [I’m afraid of having] that kind of conversation. In the past I felt comfortable doing it on my own, but I think going forward I will probably call in another faculty member to just sit with me, be the second pair of ears.”

We heard from many faculty and staff members who were fearful of one-on-one meetings with students in their office when the subject was controversial, about grades, or about academic integrity. To a person, they planned to move the meeting to a “gun-free zone” (a bar or church) or have a colleague be directly outside the office door.

Campus Carry as Political Theater

Despite concern over campus carry and its potential impact on academic freedom, some of the comments focused on campus carry as a symbolic, political attack on academia. David scoffed at the argument that campus carry increases safety: “I think it is really unfortunate that this law was passed. . . . and it is being discussed as if it is an issue of safety, but we all know . . . it does not have to do with safety. It has to do with an industry. . . . I think this is an example of legislation not matching the will of the people, so this is a larger issue that just shows a broken system where industry is king.” For David, campus carry is a purely political law motivated by the power of the gun lobby.

Alan characterized campus carry as much more symbolically motivated and rooted in power structures: “My feeling on campus carry is that it speaks to so much more than just what it ostensibly is. It speaks for the real sense of enmity between Texas politicians and intellectuals of any sort. The perception is that we hold them in contempt—not all of them, but many of them. . . . I would say the right wing is fascinated with power—and so, this is a way they demonstrate their power over us and make it clear, at least they claim, that their intellectual power is of more significance.” For him, campus carry implementation was a means to assert the power of the state over the perceived liberal academy.

Sam hoped for a more positive outcome: “It is desirable that we would not have this law, but that is a circumstance that politicizes the community. It is their reaction that makes some change, and that change is a positive thing.” For him, the highly politicized conversations and generally adverse reactions to campus carry

bring the issue of gun safety to the forefront which, he hoped, would bring long-term positive political engagement and change.

Legal Challenge to Campus Carry

On August 22, 2016, three UT faculty members filed for a temporary injunction to stop the implementation of campus carry in the US District Court for the Western District of Texas (Austin Division). The injunction was denied. A second hearing was held for a motion to dismiss, which was granted on July 6, 2017.⁹ In both decisions, Judge Lee Yeakel focused on the concept of cognizable injury, substantive claims of harm, and self-censorship. We dissect these issues and indicate why the extant legal criteria are inadequate in academic freedom cases involving campus carry.

In the hearing on the request for a temporary injunction, the UT faculty members argued that the campus carry policy violated their due process rights under the Fourteenth Amendment because, “to the extent the Policy imposes a penalty on professors at the University for prohibiting handguns in their classrooms, the Policy is unconstitutionally vague.” Yeakel rejected this argument, claiming due process rights are only violated in instances in which the policy or law is so vague as to be incomprehensible. In reviewing the policy, Yeakel found, “a person of ordinary intelligence would understand if a professor were to communicate to her class that individuals licensed to carry handguns may not carry a handgun in her classroom, such communication would be a misrepresentation of and in contravention to the Campus Carry Policy.” One of our participants countered, “We don’t know the policy regarding a[n abandoned] gun in a bathroom [which has happened at least twice at UT], and I don’t know what buildings are or aren’t exempt from campus carry. Whether or not the rule is vague, I do think this highlights the poor implementation of the policy, which is absolutely an issue that needs to be addressed if not honored by the court.”

The UT faculty plaintiffs further argued that the campus carry policy amounted to a direct infringement on their First Amendment right of academic freedom by producing a “chilling” environment stifling the free exchange of ideas. The UT faculty asserted “classroom discussion will be ‘circumscribed by the near-certain presence of loaded guns’ and that their ability to ‘make [their classrooms] truly a marketplace for the robust exchange of ideas will be impaired.’” Furthermore, the faculty argued the penalty imposed by the law for prohibiting guns further encouraged “trimming their [academic] sails” during classroom discussion. Texas attorney general Ken Paxton filed a motion saying that the State of Texas did not allow any academic freedom for faculty members aside from the First Amendment. Instead, he asserted that the university had complete institutional academic freedom to dictate what happens in classrooms. In his analysis of institutional

academic freedom, Hiers argued that “since 1978, several judges, Justices and commentators have declared that the First Amendment somehow under-girds the academic freedom or autonomy of public colleges and universities. They did so because they believed that at some point, the Supreme Court already had so held. . . . *But the Supreme Court has never held that public colleges and universities are entitled to either academic freedom or institutional autonomy under the First Amendment.* To do so would require addressing several constitutional considerations.”¹⁰

The UT faculty alleged that the campus carry policy further violated their equal protection rights under the Fourteenth Amendment by legalizing campus carry on public university campuses while also granting private universities an “opt out.” Under the equal protection clause, Yeakel found the state had a rational basis for the “legitimate governmental end of enabling individuals to defend themselves,” and a simultaneous rational basis for the legitimate governmental end of protecting the private property rights of private institutions.

Yeakel similarly rejected equal protection arguments against excluding guns in certain areas of campus but not classrooms. The campus carry law, he stated, permitted the exclusion of guns from areas where the discharge of the gun could cause “grave” or “catastrophic” harm, however, none of the exclusion zones could be tantamount to a blanket ban. He stated the campus carry policy’s ban of guns in some areas of campus but not others was based on the university’s rational, legitimate desire to comply with the law, both in excluding guns from areas where discharge could cause catastrophic harm, but also in allowing guns in classrooms and most buildings to avoid blanket bans. To this logic, one participant responded that “the discharge/cause-great-harm clause is severely flawed . . . when the accidental discharge of a gun [causing] the loss of a student’s life is not considered a severe enough consequence.”

In the motion to dismiss, Yeakel discussed the lack of standing by the three professors due to their failure to demonstrate three elements: an “injury in fact,” a causal connection between the injury and the conduct complained of, and it must be “likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.”¹¹ He argued that the “allegations of a subjective chill are not an adequate substitute for a claim of specific present objective harm or threat of future harm.” This assumes a direct, measurable physical harm from permitting guns in academic spaces such as classrooms, common academic areas, and offices. However, the faculty we interviewed indicated psychological harm in the form of fear of harm, anxiety, and stress. These specific physical reactions arose because of the university’s policy consenting to concealed carry in academic spaces. Further, these reactions differed for faculty based on discipline, gender, sexual orientation, and race.

Currently, Judge Yeakel's dismissal of the case is on appeal at the Fifth Circuit (New Orleans). Oral arguments were made to a three-judge panel in July of 2018. Attorney general Paxton once again asserted that only institutional, not individual, academic freedom exists.¹² AAUP filed an amicus brief in the case.¹³ If the plaintiffs prevail, the case will go to a hearing before the full court.

Discussion

Classroom discussions in the sciences focus on the scientific process and proven facts. It is unlikely that students or faculty hotly contest the laws of nature. A chemistry professor is not likely to modify a discussion on the laws of matter because of the risk of heated debate. In the social sciences and humanities, in contrast, larger social issues such as marriage equality, the death penalty, human rights, racism, sexism, Middle East peace, discrimination, and other contested issues are frequently discussed. Indeed, the university has a difficult dialogues program, including guest lectures and in-class discussions. Recent incidents of violent protests of campus speakers demonstrate the concrete possibility of physical harm in discussing controversial topics. As a result, faculty and students are likely to change their behaviors because of these threats.

In addition to classroom discussions, faculty members may change their behaviors in one-to-one interactions with students. While many of these outside-the-classroom meetings discuss academic topics such as course planning, other issues, such as an alleged violation of academic integrity or classroom behavior, could cause significant conflict. One of the women we interviewed spoke of having to meet with a student about his illegal carrying of a gun, all the while fearing that he might pull out a gun and threaten her. Her fear was justifiable, measurable, and caused because the university and the law permitted concealed carry in academic spaces including classrooms and some offices. It is no wonder that some faculty hold office hours in bars and churches if they feel an imminent threat.

Our colleague who handles student disciplinary hearings reports that she insists on holding the meetings at the university police building with its metal detectors and law enforcement personnel nearby. Perhaps all faculty should demand that sensitive conversations about grievances, grades, academic integrity, and similarly charged issues be held in an appropriate law enforcement setting.

By comparison, Congress and many legislatures ban the carrying of handguns by spectators and visitors. Courtrooms are gun-free, yet academic spaces that promote similar debate and basic judicial processes are not gun-free. Further, if a student or visitor takes a concealed weapon into an academic space intending to use it for harm, haven't we magnified the chances of a higher body count? Wouldn't it be preferable to ban guns

inside buildings and focus on safety on the grounds of the campus? In this respect, the campus carry law is more academic speech bludgeon than safety measure.

Forty-one UT-Austin departments and organizations issued statements¹⁴ against campus carry. The fear of physical harm because of campus carry was especially pronounced among departments with a large population of women and minority students and faculty and a focus on diversity studies. We excerpt four of those statements here. The African American and African Diaspora Department wrote, “Applied to our situation here at UT, in the presence of firearms the probability that bullets will find us is higher than for any other campus population. . . . It is not uncommon for Warfield Center faculty [that is, at the John L. Warfield Center for African and African American Studies] to be the object of documented threats and harassment in our offices and lecture halls.” The statement concluded that “the expansion of citizens’ rights to bear firearms facilitates the violent deaths of Blacks.”

The Center for Women’s and Gender Studies stated its expectation of a chilling effect on classroom speech and learning: “We are fully aware of the sensitive and often controversial nature of the topics with which we engage on a daily basis . . . The possibility that an armed student (licensed or not) might be present in the classroom or in our Center will necessarily limit the topics we discuss and our willingness to engage students in controversial discussions.”

The Middle Eastern Studies Department also cited concerns about chilled speech and the potential for deadly violence: “Increasing the number of guns in our classes, libraries, labs, lounges, dormitories, and offices, promises either to shut down such difficult dialogues altogether . . . or to increase the chances of them turning deadly.”

The Latin American studies department worried that the presence of concealed guns on campus would make it difficult to recruit new faculty: “We are particularly concerned about the effect of the law on the recruitment and retention of minority faculty and students from the United States and from Latin America,” likely due both to the history of violence in many Latin American countries and the history of racism toward Latin Americans in the United States.

In our politically divided country, faculty are increasingly harassed for presenting scientific data. Since the AAUP requested in the spring of 2016 that its members report on cases of harassment, dozens of faculty members have responded. Some examples are (1) a medical school faculty member who campaigned against anti-vaccination misinformation was accused of theft and defrauding the government by those he criticized; (2) a faculty member who required students to use scientific data for papers about fracking saw his home and

campus address published on the site of an alt-right group after a student complained to the group; (3) the name of a female Jewish professor who researched critical whiteness studies was posted to a white supremacist website where the subscribers waged an anti-Semitic campaign against her; (4) a student who had lost one point on an essay for not using gender-inclusive language was interviewed by Fox News, and as a result the professor received hundreds of violent and misogynist emails and phone calls. Likewise, UT-Austin faculty also become targets for their viewpoints. Professors Matt Valentine, a gun violence expert, and Richard Reddick, a social justice advocate, receive hate mail and phone calls with every article or op-ed they publish in the popular press.

Unfortunately, the university administration often ignores such harassment. Worse yet, sometimes the faculty member rather than the harasser is sanctioned. Such actions by administrators have put the notion of free speech in the deep freeze. Moreover, at public universities, this type of action provides the clear nexus between state action and censorship that Judge Yeakel sought in the UT-Austin case.

Conclusion

As our interviews demonstrate, faculty have been injured psychologically and taken specific steps to avoid harm. They “exit” by seeking safer locations for office hours and research, by moving courses online, or by leaving the university altogether.¹⁵ They modify their classroom content and their delivery. They modify their interactions with students outside the classroom. In any other setting, the employer would seriously take these actions. No employee should have to fear gun violence daily.

Does this chill speech? Yes. The chilling mechanism can range from cold water to a deep freeze, but the result is the same. What we need now is larger documentation of how administrators and faculty have reacted to campus carry across the country to provide a larger definition of the chilling of free speech.

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Notes

¹ Senate Bill 11, 411 Texas Government Code § (2015).

² *Heller v. District of Columbia*, 554 U.S. 570 (U.S.C. 2006).

³ *McDonald v. City of Chicago*, 561 U.S. 742 (U.S.C. 2010).

⁴ For more information on the confrontation between gun rights activists and Representative Poncho Nevárez (D-Eagle Pass), see Morgan Smith, "Guns Rights Activists Cause Stir at Texas Capitol," *Texas Tribune*, January 13, 2015, <https://www.texastribune.org/2015/01/13/gun-rights-activists-cause-stir-texas-capitol/>.

⁵ For more information on the Dallas police shooting and open carry advocates, see Lisa Marie Pane, "Friend or Foe? Open Carry Law Poses Challenge to Police," *Associated Press*, published in *U.S. News and World Report*, January 11, 2016, <https://www.usnews.com/news/us/articles/2016-07-11/friend-or-foe-open-carry-law-poses-challenge-to-police>. See also Ben Guarino, "Man Falsely Connected to the Shooting by Dallas Police Is Now Getting 'Thousands' of Death Threats," *Washington Post*, July 8, 2016, https://www.washingtonpost.com/news/morning-mix/wp/2016/07/08/during-deadly-dallas-shooting-confusion-swirled-around-armed-man-carrying-a-rifle/?utm_term=.2c5097359cf1.

⁶ We are currently in another round of interviews with primarily male faculty, however, these data have not yet been analyzed. See Patricia Somers, Jessica Fry, and Carlton J. Fong, "Duck and Cover Little Lady: Women and Campus Carry," *Thought and Action*, Summer 2017, 37-48.

⁷ *Sweezy v. New Hampshire*, 354 U.S. 250 (1957).

⁸ Richard H. Hiers, "Institutional Academic Freedom of Autonomy Grounded upon the First Amendment: A Jurisprudential Mirage," *Hamline Law Review* 30, no. 1. (2007): 12.

⁹ *Glass et al. v. Paxton et al.*, petition for injunction, available from https://static.texastribune.org/media/documents/show_temp.pl.pdf?_ga=2.76529878.236434544.1517087155-683684557.1480014544.

¹⁰ Hiers, "Institutional Academic Freedom of Autonomy," 56; emphasis in original.

¹¹ *Glass et al. v. Paxton et al.*, motion to dismiss, available from https://www.texasattorneygeneral.gov/files/epress/Glass_-_Dct_order_dismissing_7_7_2017.pdf?cachebuster:5.

¹² For the reaction to Paxton's assertions see Ralph K. M. Haurwitz, "UT: Professors have academic freedom despite what we say in court", *My Statesman*, July 18, 2018, <https://www.mystatesman.com/news/local/professors-have-academic-freedom-despite-what-say-court/5oW6MvVHYKAahEsBKQ0JvL/>.

¹³ The brief is available at <https://www.aaup.org/brief/glass-v-paxton-university-texas-austin-no-17-50641-5th-cir-nov-20-2017amicus-brief-filed>.

¹⁴ See department statements at <http://gunfreeut.org/statements>.

¹⁵ For a list of the better-known departures, see Nyssa Kruse, "Campus Carry Concerns Drive Another Texas Prof to Resign," *Texas Observer*, July 1, 2016, <https://www.texasobserver.org/campus-carry-von-zharen-resign/>.



Progun protest on the University of Texas campus (background is Texas Tower, site of first mass shooting on college campus in modern era)

Source: Matt Valentine (used by permission)