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Florida Gun Laws Weaken: Another Setback for the Mass Shooting Generation

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FLORIDA GUN LAWS WEAKEN: ANOTHER SETBACK FOR THE MASS SHOOTING GENERATION

*Riley Kendall**

Abstract

While gun control has been a topic of controversy in the United States for decades, one area that has seemed undebatable is the protection of children from gun violence in our Nation's schools. The methods of achieving this end goal vary from state to state. Some states have continued the longstanding tradition of designating schools as "gun-free zones," while others have employed armed security guards. Florida has chosen the latter option for its public and charter schools. However, the Florida Legislature has taken a dramatic deviation from this path that will negatively affect students attending private religious schools—it passed a law that allows religious institutions that are attached to a school to decide to allow concealed carry permit holders to bring weapons on their grounds.

The passage of this law sparked traditional gun debate arguments. Gun rights activists voiced their opinions by saying that although this was a small step, it was a step in the right direction. Opponents of the law, including parents, preachers, and organizations, are unsettled by the new law and fear that the safety of the children attending these schools has been compromised. This article discusses the meaning of the new law and illustrates its shortcomings. It explains the implications of this law and argues why it should be repealed.

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Introduction

On February 14, 2018, seventeen lives were taken by a school shooter at Marjory Stoneman Douglas High School in Parkland, Florida.¹ “If I don’t make it[,] I love you[,] and I appreciate everything you did for me.”² This is just one of many heartbreaking text messages sent to loved ones during every person’s worst nightmare. Schools should be a safe place for children to learn, foster relationships, gain values, and, most importantly, be free from violence. However, in today’s society, students are no longer shocked when they hear that another school shooting has occurred.³ Even worse, they consider themselves the “mass-shooting generation.”⁴

Even though there is disagreement over how to prevent mass shootings in schools—such as whether we should require mental health background checks, invest in school resource officers, or abolish gun-free zones⁵—what seems to be the end goal for all the varying solutions is the protection of children. Therefore, a law that places property rights over children’s safety in schools and allows concealed carry permit holders to be within a few feet of students seems intolerable. However, this is precisely what the Florida Legislature did.⁶

Part I of this article gives a brief history of gun laws pertaining to schools in Florida. Part II breaks down the language and meaning of § 790.06(13) of the Florida Statutes. It first explains its interrelation with Florida’s concealed carry laws and how the ease of obtaining a permit can lead to dangerous outcomes in these religious institutions. It then describes how its broad language raises other concerns, such as the potential for conflicting rights between private property owners and religious institutions, the failure to define what constitutes a “religious institution,” and the lack of any regulations regarding carrying a concealed weapon during school hours. Part III explores the implications of this new law on children attending these private religious schools and the religious institutions themselves. Part IV explains why Florida has moved in the wrong direction regarding gun control by demonstrating that putting more guns on school grounds does not solve the epidemic of mass shootings. This article ultimately proposes that Florida’s new gun law should be repealed.

I. History of Florida’s Gun Laws Pertaining to Schools

Guns on school grounds have historically been prohibited in the United States.⁷ *District of Columbia v. Heller* made it clear that Second Amendment rights are not unlimited.⁸ *Heller* stands for the proposition that the Second Amendment protects one’s right to self-defense in their

¹ Ella Cerón, *Students Texted Their Parents Goodbye During the Florida Shooting*, TEEN VOGUE (Feb. 15, 2018), <https://www.teenvogue.com/story/student-texts-florida-shooting>.

² *Id.*

³ Vanessa Terrades & Shahabudeen K. Khan, *Will it EVER End? Preventing Mass Shootings in Florida & the U.S.*, 51 SUFFOLK U. L. REV. 505, 524 (2018).

⁴ Charlotte Alter, *The School Shooting Generation Has Had Enough*, TIME (Mar. 22, 2018, 7:00 AM), <http://www.time.com/longform/never-again-movement/>.

⁵ See generally Terrades & Khan, *supra* note 3, at 528–33 (explaining different alternatives to deterring mass shooters).

⁶ See FLA. STAT. § 790.06(13) (2022).

⁷ Darrell A. H. Miller, *Constitutional Conflict and Sensitive Places*, 28 WM. & MARY BILL RTS. J. 459, 471 (2019).

⁸ *District of Columbia v. Heller*, 554 U.S. 570, 626 (2008).

home.⁹ Throughout Fourth Amendment jurisprudence, the home has always been considered a constitutionally protected area that should be free from unreasonable government intrusion.¹⁰ On the other hand, the strictures of the Fourth Amendment are reduced in school settings because a school's legitimate need to maintain an adequate learning environment outweighs a student's expectation of privacy.¹¹ This suggests that governmental intrusion in one's home is more severe than in one's school. The decision in *Heller* appears to follow the same underlying rationale regarding the Second Amendment: it is unconstitutional to prohibit a person from possessing a handgun in their own home.¹² However, the Court explicitly states that its opinion should not be understood to cast any doubt on our country's longstanding prohibitions regarding the "carrying of firearms in sensitive places such as schools."¹³

A. The Marjory Act

After the mass shooting at Marjory Stoneman Douglas High School (Marjory Stoneman) in 2018, Florida passed the Marjory Stoneman Douglas High School Public Safety Act (Marjory Act).¹⁴ One of the primary purposes of the Marjory Act was to promote student safety by addressing the crisis of gun violence on school grounds.¹⁵ The passage of the Marjory Act was due to a powerful student-led movement fighting for gun reform following the shooting.¹⁶ The students publicly called out the National Rifle Association (NRA) for its strong political influence and said the group was the enemy of the millions of students living in the "mass-shooting generation."¹⁷ Emma Gonzalez, a student from Marjory Stoneman, gave a speech that received national attention three days after the attack.¹⁸ Gonzalez stated that elected officials were putting the interests of a minority group, the NRA, above the interests of the children they are responsible for protecting.¹⁹

The students created the March for Our Lives organization, which focused on the innocence of children and how their lives were at risk because of unwise gun policies.²⁰ One student voiced his fear that "gun violence was an ongoing threat in his life."²¹ The students gained a large following on social media and used it to their advantage to attack the government for its failure to protect children.²² Using the threat of their large following, they called out

⁹ *Id.* at 635.

¹⁰ *Kyllo v. United States*, 533 U.S. 27, 31, 34 (2001).

¹¹ *See New Jersey v. T.L.O.*, 469 U.S. 325, 340 (1985).

¹² *See Heller*, 554 U.S. at 628–29 (stating that a ban on the inherent right of self-defense in the home would fail constitutional muster "[u]nder any of the standards of scrutiny that have applied to enumerated constitutional rights.>").

¹³ *Id.* at 626–27.

¹⁴ Emily Plakon, *Reactionary Legislation: The Marjory Stoneman Douglas High School Public Safety Act*, 49 STETSON L. REV. 679, 681 (2020).

¹⁵ *See FLA. STAT. § 943.687* (2022).

¹⁶ Alter, *supra* note 4.

¹⁷ *Id.*

¹⁸ David S. Meyer & Kaylin Bourdon, *Social Movements and Standing in the American Gun Debate*, 69 EMORY L.J. 919, 953 (2020).

¹⁹ *Id.* at 954.

²⁰ *Id.* at 958.

²¹ *Id.* at 959.

²² *Id.* at 957–58.

politicians who sided with the NRA, telling them they would be considered the enemy if they did not do something to fix the gun crisis.²³ The movement encouraged young people to vote, and the students told politicians they would vote them out of office if they did not side with them—their legacy would be gone, and their names would be smeared in the textbooks.²⁴

The students' voices were heard, and the Marjory Act was passed.²⁵ The Marjory Act requires every public and charter school to have a safe-school officer present to protect students, teachers, and visitors.²⁶ There are weighty eligibility requirements to serve as an officer on school grounds.²⁷ A certified law enforcement officer must submit to a psychological evaluation, drug testing, and a criminal background check.²⁸ The officer must also complete mental health crisis intervention training to improve their knowledge and skills for handling students with mental illness.²⁹

A school officer that is a school district employee or an individual working for a security agency must have a concealed carry permit and a Class D or Class G license, respectively.³⁰ They must also participate in the Coach Aaron Feis Guardian Program and receive a certificate from the sheriff.³¹ The program requires that the individual complete 144 hours of training—including 8 hours of instruction in active shooter scenarios and 80 hours of firearm instruction—with at least an 85% score to pass.³² The school officer must also pass a psychological evaluation; pass an initial drug test; submit to subsequent random drug tests; and complete ongoing training, weapon inspection, and firearm qualification annually.³³ Whether the school officer is a law enforcement officer or not, the certification requirements to carry a firearm on school grounds are extensive.³⁴ This provides students with a sense of safety and ensures that the individual fulfilling this role does it for the right reason—to protect children.

B. Prior Attempts at Similar Bills & The Enactment of House Bill 259

Since the Marjory Act only applies to public and charter schools,³⁵ and there is a ban on carrying firearms on school grounds,³⁶ there was a movement in the Florida Legislature to allow concealed carry permit holders to bring their guns into religious institutions even if there was a school on the premises.³⁷ In 2018, Senate Bill 1048 was introduced.³⁸ The purpose of the bill was to allow a religious institution to authorize certain people with a concealed weapon permit to

²³ Alter, *supra* note 4.

²⁴ *Id.*

²⁵ Plakon, *supra* note 14; *see* FLA. STAT. § 1006.12 (2022).

²⁶ FLA. STAT. § 1006.12 (2022).

²⁷ *See id.*

²⁸ *Id.* § 1006.12(1)–(2).

²⁹ *Id.*

³⁰ *Id.* § 1006.12(3)–(4).

³¹ *Id.*

³² FLA. STAT. § 30.15(1)(k)(2) (2022).

³³ *Id.*

³⁴ *See* FLA. STAT. § 1006.12 (2022).

³⁵ *Id.*

³⁶ FLA. STAT. § 790.06(12)(a) (2022).

³⁷ *See* FLA. S. JOUR. 80 (Reg. Sess. 2018).

³⁸ *Id.*

carry a handgun in public or private schools or a career center if it is an established place of worship.³⁹ However, the bill prohibited carrying a firearm on school grounds during regular school hours or when school-sponsored extracurricular activities were taking place.⁴⁰ This bill died in the Senate.⁴¹

In 2019, House Bill 403 was introduced.⁴² This bill gave private property owners and religious institutions the power to decide whether to allow weapons on their premises without violating Florida's ban on the possession of firearms on school property.⁴³ The purpose of the bill was to give religious institutions the authority to authorize a person with a concealed weapon permit to carry a gun on the property if the authorization was for a lawful purpose.⁴⁴ This bill made it through the House of Representatives but failed in the Senate.⁴⁵

Florida appeared to be moving in the right direction of protecting children in schools by passing the Marjory Act and declining House Bill 403 and Senate Bill 1048. However, only three years after the devastating shooting at Marjory Stoneman, House Bill 259 was introduced and enacted in Florida law.⁴⁶ The bill was codified as § 790.06(13) of the Florida Statutes and allows anyone with a concealed carry license to bring a weapon on the property of a religious institution for any lawful purpose, notwithstanding any other law.⁴⁷ The statute also gives the religious institution control over any property it “owns, rents, leases, borrows, or lawfully uses.”⁴⁸ This bill aims to permit religious institutions to allow concealed carry license holders to bring their weapons on their grounds, regardless of whether they are attached to a school.⁴⁹ Supporters of the bill stated that this is a private property issue.⁵⁰ They argued that it fixes a loophole in the current law because religious institutions without schools can have a policy that allows concealed weapons on their premises, while religious institutions with schools are denied that choice.⁵¹

Essentially, this law allows guns to be closer to children in religious schools under the guise of “private property rights.” The current law has shifted the authority in a way that

³⁹ Fla. S. Comm. on Rules, C.S. for S.B. 1048 (2018) Post-Meeting Staff Analysis 1 (Feb. 1, 2018), <https://www.flsenate.gov/Session/Bill/2018/1048/Analyses/2018s01048.rc.PDF>.

⁴⁰ *Id.*

⁴¹ FLA. LEGIS., FINAL LEGISLATIVE BILL INFORMATION, 2018 REG. SESS., HISTORY OF SENATE BILLS at 126, C.S. for S.B. 1048.

⁴² FLA. H.R. JOUR. 51 (Reg. Sess. 2019).

⁴³ Fla. H.R. Comm. on Judiciary, H.B. 403 (2019) Post-Meeting Staff Analysis 1 (Apr. 17, 2019), <https://www.flsenate.gov/Session/Bill/2019/403/Analyses/h0403e.JDC.PDF>.

⁴⁴ *Id.*

⁴⁵ FLA. LEGIS., HISTORY OF LEGISLATION, 2019 REG. SESS., HISTORY OF HOUSE BILLS at 44–45, H.B. 403.

⁴⁶ H.B. 259, 2021 Leg., 123d Reg. Sess. (Fla. 2021).

⁴⁷ FLA. STAT. § 790.06(13) (2022).

⁴⁸ *Id.*

⁴⁹ *Safety of Religious Institutions: Hearing on H.B. 259 Before the S. Comm. on Rules*, 2021 Leg., 123d Sess. (Fla. 2021) [hereinafter *S. Comm. on Rules*] (statement of Sen. Gruters), <https://thefloridachannel.org/videos/4-20-21-senate-committee-on-rules/>.

⁵⁰ *Id.*

⁵¹ *Id.*

drastically differs from the prior versions.⁵² The first version explicitly forbade carrying a firearm while school was in session.⁵³ Both House Bill 403 and Senate Bill 1048 stated that a concealed carry license holder was prohibited from carrying a firearm *unless authorized*.⁵⁴ Now, any person with a concealed carry permit is authorized to carry *unless prohibited* by the religious institution.⁵⁵ Private property rights have trumped the religious institution's ability to authorize only certain people to carry a firearm and the belief that children should be free from the presence of guns while in school.

II. A Closer Look at the Meaning of Florida Statute § 790.06(13)

The language used, or lack of, in § 790.06(13) of the Florida Statutes raises several questions about its meaning and scope. Section 790.06(13) states:

Notwithstanding any other law, for the purposes of safety, security, personal protection, or any other lawful purpose, a person licensed under this section may carry a concealed weapon or firearm on property owned, rented, leased, borrowed, or lawfully used by a church, synagogue, or other religious institution. This subsection does not limit the private property rights of a church, synagogue, or other religious institution to exercise control over property that the church, synagogue, or other religious institution owns, rents, leases, borrows, or lawfully uses.⁵⁶

Allowing concealed carry permit holders to bring weapons into a religious institution raises concerns because of the relative ease of obtaining a permit in Florida.⁵⁷ The statute expressly addresses the rights of a religious institution to exercise control over its property but fails to address the rights of private property owners who lease their property to the religious institution. It also fails to define “religious institution” and does not require that concealed carry permit holders give notice to the religious institution. Lastly, the statute gives broad discretionary power to religious institutions to decide when and where a concealed carry permit holder may bring their weapon.

A. Florida's Low Standard to Obtain a Concealed Carry Permit

Under Florida Statute § 790.06(13), the threshold to allow a person to bring a firearm on the school grounds of a religious institution is merely that the person has a concealed carry permit.⁵⁸ Obtaining a concealed carry license is relatively easy in Florida because it is a “shall issue” state.⁵⁹ Florida's Department of Agriculture and Consumer Services (the Department)

⁵² *Safety of Religious Institutions: Hearing on H.B. 259 Before the H. Crim. Just. & Pub. Safety Subcomm.*, 2021 Leg., 123d Sess. (Fla. 2021) [hereinafter *H. Crim. Just. & Pub. Safety Subcomm.*] (statement of Rep. Grieco), <https://thefloridachannel.org/videos/2-10-21-house-criminal-justice-public-safety-subcommittee/>.

⁵³ Fla. H.R. Comm. on Judiciary, H.B. 403 (2019) Post-Meeting Staff Analysis 1 (Apr. 17, 2019), <https://www.flsenate.gov/Session/Bill/2019/403/Analyses/h0403e.JDC.PDF>.

⁵⁴ *H. Crim. Just. & Pub. Safety Subcomm.*, *supra* note 52 (statement of Rep. Byrd).

⁵⁵ *Id.*

⁵⁶ FLA. STAT. § 790.06(13) (2022).

⁵⁷ *See R.C. v. Dep't of Agric. & Consumer Servs.*, 323 So. 3d 275, 276–77 (Fla. Dist. Ct. App. 2021).

⁵⁸ FLA. STAT. § 790.06(13) (2022).

⁵⁹ *Id.* § 790.06(2).

must issue a permit to every applicant who meets the criteria listed in the statute.⁶⁰ The Department has no discretion to determine eligibility if the applicant meets the requirements and can only deny a permit if the applicant falls under one of the very narrow exceptions.⁶¹

Section 790.06 of the Florida Statutes only requires that the applicant be a US resident; 21 years old; not suffer from a physical infirmity that prevents the safe handling of a weapon; have the desire to carry a concealed weapon for lawful self-defense; demonstrate competence with a firearm; and not be prohibited from purchasing a firearm by any other Florida or federal law.⁶² None of the above requirements are challenging to prove.⁶³ Demonstrating competence with a firearm requires the completion of a firearms safety and training course held by an approved organization, such as the Fish and Wildlife Conservation Commission or the National Rifle Association.⁶⁴ Senator Farmer expressed concern over the competency requirement based on his experience taking one of these courses.⁶⁵ He said that even though he had not shown any level of training or efficiency and that it was his first time holding a gun, he was eligible for a concealed weapon permit after the three-hour course.⁶⁶

The statute also contains provisions for people found guilty of controlled substance crimes, chronically and habitually abusing alcohol, and misdemeanor crimes of domestic violence; however, an applicant is only barred from obtaining a license if these events occurred within the immediate three years before applying.⁶⁷ Other relevant provisions regarding mental health bar applicants from obtaining a license unless they have been granted relief from firearms disabilities.⁶⁸ Section 790.23 of the Florida Statutes allows convicted felons to obtain a license if their civil rights and firearm authority have been restored or their criminal history record has been expunged.⁶⁹

The Department must issue the license if an applicant meets all the above criteria.⁷⁰ The threshold is relatively low, and a majority of people that apply are issued a permit.⁷¹ From July 2021 to June 2022, the Department received 281,681 new applications and 95,755 renewal applications.⁷² Of the 377,436 applications, only 8,490 were denied based on applicant

⁶⁰ R.C., 323 So. 3d at 276.

⁶¹ *Id.* at 277.

⁶² FLA. STAT. § 790.06(2)(a)–(c), (g)–(h), (n) (2022).

⁶³ See Clayton E. Cramer & David B. Kopel, *Shall Issue: The New Wave of Concealed Handgun Permit Laws*, 62 TENN. L. REV. 679, 691 (1995) (“‘Anyone who wants to carry a pistol may now do so.’ According to *The Economist*, the provisions about minimum age requirements, drug abuse, and misdemeanor convictions apparently excluded no one.”).

⁶⁴ FLA. STAT. § 790.06(2)(h) (2022).

⁶⁵ S. Comm. on Rules, *supra* note 49 (statement of Sen. Farmer).

⁶⁶ *Id.*

⁶⁷ FLA. STAT. § 790.06(2)(e), (f), (l) (2022).

⁶⁸ *Id.* § 790.06(2)(j).

⁶⁹ FLA. STAT. § 790.23 (2022).

⁷⁰ FLA. STAT. § 790.06(2) (2022).

⁷¹ FLA. DEP’T OF AGRIC. & CONSUMER SERVS. DIV. OF LICENSING, CONCEALED WEAPON OR FIREARM LICENSE REPORTS 3 (2022), <https://perma.cc/7M5X-CLN4>.

⁷² *Id.*

ineligibility.⁷³ In other words, only 2.2% of applicants were denied because they could not meet the criteria.⁷⁴ If you want a concealed carry permit in Florida, you will get one.

The concern that an applicant can easily obtain a license is exacerbated when considering that most religious institutions open their doors to the public, allowing anyone to enter.⁷⁵ Under the law, as it stands, there is no requirement for a person carrying a concealed weapon to give notice to the religious institution.⁷⁶ The management of the religious institution will have no way to discern when congregants are carrying a gun during service—whether for a lawful purpose or some malicious motive. Religious institutions that wish to allow weapons on their grounds could arguably create a policy that mandates notice to the management.⁷⁷ Representative Grieco described this argument as “theatre” because enforcing such a policy is untenable.⁷⁸ The private property owner and the institution will not know if a person is carrying unless they conduct pat-downs of every person entering the premises.⁷⁹ Further, there would be no criminal repercussions for violating an institution’s notice policy.⁸⁰ Section 790.06 of the Florida Statutes provides that any person who violates the provisions relating to concealed carry is subject to a second-degree misdemeanor.⁸¹ However, the language “notwithstanding any other law” in § 790.06(13) removes this critical protection.⁸²

Comparing the requirements of concealed carry to the requirements of the Marjory Act demonstrates the grave concern about the ability of firearms to be closer to children with significantly fewer restrictions. Public and charter schools can appoint a particular individual to serve as their school officer.⁸³ However, private religious schools lack that ability within the meaning of the statute because they do not have any legal enforcement mechanisms to support their decision.⁸⁴ An individual, who shall be issued a concealed carry permit, can now enter a religious institution when school is in session without notifying the management that they have a firearm.⁸⁵ Thus, it is apparent that children attending private religious schools have significantly less protection than children attending public or charter schools.⁸⁶

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ *H. Crim. Just. & Pub. Safety Subcomm.*, *supra* note 52 (statement of Rep. Chambliss).

⁷⁶ *Id.* (statement of Rep. Byrd).

⁷⁷ *Id.* (stating that they are giving the religious institution the leeway to create a notice requirement rather than make the choice for them).

⁷⁸ *Safety of Religious Institutions: Hearing on H.B. 259 Before the H. Judiciary Comm.*, 2021 Leg., 123d Sess. (Fla. 2021) [hereinafter *H. Judiciary Comm.*] (statement of Rep. Grieco), <https://thefloridachannel.org/videos/3-17-21-house-judiciary-committee/>.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ FLA. STAT. § 790.06(12)(d) (2022).

⁸² *H. Judiciary Comm.*, *supra* note 78 (statement of Rep. Grieco).

⁸³ FLA. STAT. § 1006.12 (2022).

⁸⁴ *H. Judiciary Comm.*, *supra* note 78 (statement of Rep. Grieco).

⁸⁵ *H. Crim. Just. & Pub. Safety Subcomm.*, *supra* note 52 (statement of Rep. Byrd).

⁸⁶ Danielle J. Brown, *FL House Votes to Allow Guns in Churches Near Schools*, FLA. PHOENIX (Mar. 26, 2021, 1:46 PM), <https://floridaphoenix.com/2021/03/26/fl-house-votes-to-allow-guns-in-churches-near-schools/> (Rep. Joseph Geller stated, “HB 259 makes students who go to religious schools less safe than those who go to public schools.”).

B. The Statute's Overbroad Language Creates Concerns

It is clear that any person with a concealed carry permit may carry their firearm inside a religious institution, regardless of whether it is connected to a school.⁸⁷ However, further examination of the text and meaning of § 790.06(13) of the Florida Statutes demonstrates that it is overly broad and lacks clear guidance for religious institutions and private property owners. For example, the statute's language is vague regarding whether the property owner's rights supersede the religious institution's decision to allow weapons on the grounds.⁸⁸ Representative Driskell sought to amend the bill to make it more explicit that a private property owner who rents or leases their property to a religious institution has the authority to decide whether weapons will be permitted.⁸⁹ Senator Polsky also attempted to amend the bill to add that “[i]f such property is not owned by the religious institution, the religious institution [must] receive[] the permission of the property owner or administrator.”⁹⁰ Neither amendment was passed⁹¹ as opponents viewed this right as implicit in the current text, rendering the amendments unnecessary.⁹²

However, the right does not seem to be implicit. Section 790.06(13) explicitly states that “a person licensed under this section may carry a concealed weapon or firearm on property owned, rented, leased, borrowed, or lawfully used by a . . . religious institution.”⁹³ Further, it provides that the subsection does not limit the private property rights of a religious institution, and the institution may exercise control over property it “rents, leases, borrows, or lawfully uses.”⁹⁴ What is explicit is that the religious institution has the ability to exercise control over private property it is leasing, renting, or borrowing from a private property owner. Thus, it cannot also be true that the private property owner has the ability to prohibit the religious institution from exercising control over the property that it is leasing, renting, or lending to the religious institution.

Another concern with the statute's language is that because there is no clear definition of what constitutes a “religious institution,” unconventional religions could seek coverage under the law.⁹⁵ In response to this concern, Senator Gruters said that “any religious institution is a religious institution,” and although he was unsure who determines that status, he stated it would likely be based on filings with the Internal Revenue Service (IRS).⁹⁶ The IRS does not explicitly define “church.”⁹⁷ Instead, it uses a list of general characteristics to determine its status, such as regular religious services, literature of its own, established places of worship, and formal codes

⁸⁷ *Id.*

⁸⁸ *H. Judiciary Comm.*, *supra* note 78 (statement of Rep. Driskell).

⁸⁹ *Id.*

⁹⁰ FLA. S. JOUR. 703 (Reg. Sess. 2021).

⁹¹ *Id.*; Fla. S. Comm. on Judiciary, Amend. 1a to Amend. 1 (Mar. 17, 2021), <https://www.flsenate.gov/Session/Bill/2021/259/Amendment/577287/PDF>.

⁹² *H. Judiciary Comm.*, *supra* note 78 (statement of Rep. Byrd).

⁹³ FLA. STAT. § 790.06(13) (2022).

⁹⁴ *Id.*

⁹⁵ *S. Comm. on Rules*, *supra* note 49 (statement of Sen. Farmer).

⁹⁶ *Id.* (statement of Sen. Gruters).

⁹⁷ *See Tax Guide for Churches & Religious Organizations*, IRS at 33 (2015), <https://www.irs.gov/pub/irs-pdf/p1828.pdf> (explaining that it defines “church” through the use of a list of common characteristics, together with other facts and circumstances).

of doctrine and discipline.⁹⁸ The IRS also does not “attempt to evaluate the content of” the religious claims as long as the beliefs are sincerely held and not illegal or contrary to public policy.⁹⁹ Because there was no clear answer during the legislative hearings and § 790.06(13) does not define “religious institution,” the assumption is that the standard is its status with the IRS.¹⁰⁰ If true, it appears that fringe and unconventional religious institutions would qualify under the statute so long as it meets the broad requirements provided by the IRS.¹⁰¹

The most significant concern of the statute’s language is that there is no guidance on where a person may carry within a religious institution and at what times. Senator Gibson questioned the lack of restrictions on the time of day a concealed carry permit holder may enter with a firearm and if the bill contemplated whether a school is open or closed.¹⁰² Senator Polsky proposed an amendment to include that if the religious institution is located on school property or is using the property as a school, a person may not carry a concealed firearm during school hours or when any extracurricular school-sponsored activity is taking place.¹⁰³ Senator Taddeo also sought to amend the bill to include “[t]his subsection does not apply if the religious institution uses the premises of a school during regular school hours.”¹⁰⁴ However, neither amendment was passed.¹⁰⁵

Because the proponents of this bill have continually described it as a “private property issue,” it is unsurprising that the answer to these concerns was that the bill gives the religious institution the freedom to make those choices.¹⁰⁶ That freedom was then compared to private business owners.¹⁰⁷ Senator Gruters argued that private business owners are permitted to make that determination under current law; thus, this bill would give religious institutions the same freedom to decide.¹⁰⁸ Although such a comparison is logical when solely looking at a private religious institution and a private business organization, it ceases to be persuasive when the religious institution is connected to a school. Favoring private property rights over the safety of the children attending these schools will have profound implications and will be discussed below.

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *S. Comm. on Rules, supra* note 49 (statement of Sen. Gruters).

¹⁰¹ See Jerome Kurtz, *Churches and Other Religious Organizations*, in THE EXEMPT ORGANIZATIONS 1979 CONTINUING PROFESSIONAL EDUCATION TECHNICAL INSTRUCTION PROGRAM 4 (1979), <https://www.irs.gov/pub/irs-tege/eotopicf79.pdf> (stating it is improper for the IRS to distinguish between organizations seeking exemption “because they are termed ‘non-traditional’ or ‘cults’ or ‘messianic’ or anything else. . . . That is not to say that the Service should ignore ‘cults’, ‘non-traditional’ religious groups, etc. It is to say merely that the Service should take each organization claiming exempt church or religious status . . . on its individual merits regardless of labels.”).

¹⁰² *S. Comm. on Rules, supra* note 49 (statement of Sen. Gibson).

¹⁰³ FLA. S. JOUR. 703 (Reg. Sess. 2021).

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *S. Comm. on Rules, supra* note 49 (statement of Sen. Gruters).

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

III. Florida Statute § 790.06(13) and its Implications

Florida Statute § 790.06(13) will have devastating effects on children, parents, and religious institutions. Florida law now allows guns to be carried in private religious schools, which are “sensitive places.”¹⁰⁹ Justice Stevens’s dissent in *Heller* foreshadowed this exact type of law when he expressed his fear that the idea of a need for self-defense would be expanded to many areas outside the home.¹¹⁰ He said the “[d]istrict’s policy choice may well be just the first of an unknown number of dominoes to be knocked off the table.”¹¹¹ Unfortunately, Justice Stevens’s fears have become a reality in Florida.

A. Children

Children are in a unique position when it comes to school. Children are required to attend school under state compulsory education laws.¹¹² However, broadly speaking, children do not have the power to decide where they attend school as parents are vested with the fundamental right to control the upbringing and education of their children.¹¹³ When a child’s well-being is at stake, courts employ the prevailing “best interest of the child” standard to determine the outcome of a given dispute.¹¹⁴ Therefore, when a decision is made that a child will attend a school where members of the public may enter the premises with a firearm—in close proximity to children—the question becomes why the child’s best interests are being ignored.

This “best interest of the child” standard was wholly overlooked throughout the legislative hearings on House Bill 259. First, when asked how many children would be impacted by the law, Senator Gruters replied that they did not have specific data on that issue.¹¹⁵ Florida’s leaders passed this law without regard to the number of children affected despite the fact that the most significant and commonly raised concern throughout the hearings was the safety of children. At one point, Senator Farmer moved to amend section 2 to state that the “amendments made by this act shall not apply until 365 consecutive days have passed without an incident in this state in which three or more persons were killed or injured by the use of a firearm.”¹¹⁶ Similar amendments that attempted to ensure students’ safety, like Senator Farmer’s, were not passed.¹¹⁷ By failing to consider the impact on children, they disregarded what would be in the best interest of the 297,839 students that attend religiously affiliated private schools in Florida.¹¹⁸

¹⁰⁹ See *District of Columbia v. Heller*, 554 U.S. 570, 626 (2008) (including schools as an example of a sensitive place).

¹¹⁰ *Id.* at 679–80 (Stevens, J., dissenting).

¹¹¹ *Id.*

¹¹² FLA. STAT. § 1003.21 (2022) (stating that children aged 6 to 16 must attend school regularly during the entire school term).

¹¹³ *Pierce v. Soc’y of Sisters*, 268 U.S. 510, 534–35 (1925).

¹¹⁴ See *Troxel v. Granville*, 530 U.S. 57, 68–69 (2000).

¹¹⁵ *S. Comm. on Rules*, *supra* note 49 (statement of Sen. Gruters).

¹¹⁶ FLA. S. JOUR. 703 (Reg. Sess. 2021).

¹¹⁷ *Id.*

¹¹⁸ *Best Florida Religiously Affiliated Private Schools (2023)*, PRIV. SCH. REV., <https://www.privateschoolreview.com/florida/religiously-affiliated-schools> [<https://perma.cc/4VQ3-3RY4>].

Thus, it is as if the safety of those students is merely a “necessary consequence” of protecting private property rights.¹¹⁹

The second disregard of the best interests of the children involves Senator Gruters’s statement that it would be up to the religious institution to decide whether or not parents would be informed that guns may be on campus.¹²⁰ Senator Farmer sought to include a mandate requiring religious institutions to create a firearm policy and post a clearly visible written notice of its policy at each entrance and exit of its premises, which failed to be adopted.¹²¹ How will a parent be able to decide what is in the best interest of their child if they are not aware of the circumstances surrounding their decision on where their child will attend school?

That is not to say that all religious institutions will fail to inform parents. The issue is that lawmakers have delegated unfettered authority to religious institutions that can have severe consequences and, again, are failing to protect children. Senator Gruters acknowledged that parents want to ensure their children are safe wherever they go to school; however, he minimized that concern by saying that the bill has unintended consequences.¹²² His justification for this consequence is that religious institutions with schools will now be able to hire armed security, if they desire, without an overly burdensome cost.¹²³

The overly burdensome cost argument made throughout the discussions is contradictory. It starts with the premise that churches without schools are currently allowed to hire private security teams, while churches with schools are not.¹²⁴ Because the Marjory Act did not extend to private schools, it left them without funding to hire private security.¹²⁵ Proponents argued that this bill would close this gap created by the Marjory Act by allowing these private religious institutions with schools to hire private security.¹²⁶ Although they are now allowed to hire private security, the “gap” was not fully closed because the bill does not provide funding for private religious schools to pay for armed security teams.¹²⁷ Because many of these institutions do not have the resources to hire private security, Representative Byrd stated that this bill would give them the option to follow their own guidelines.¹²⁸

As suggested by Representative Byrd’s statement, the logical conclusion would be that there would not be an overly burdensome cost to the religious institution because average citizens with concealed carry permits will provide security. However, when asked if allowing everyone to come into the religious institution with guns is the way to protect children without overly burdensome costs, Senator Gruters said, “absolutely not” and that this bill gives the

¹¹⁹ See *S. Comm. on Rules*, *supra* note 49 (statement of Sen. Gruters) (stating that the bill is really about property rights and will have unintended consequences).

¹²⁰ *Id.*

¹²¹ FLA. S. JOUR. 703 (Reg. Sess. 2021).

¹²² *S. Comm. on Rules*, *supra* note 49 (statement of Sen. Gruters).

¹²³ *Id.*

¹²⁴ *H. Crim. Just. & Pub. Safety Subcomm.*, *supra* note 52 (statement of Rep. Byrd).

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ Fla. H.R. Comm. on Judiciary, H.B. 259 (2021) Post-Meeting Staff Analysis 4 (June 30, 2021), <https://www.flsenate.gov/Session/Bill/2021/259/Analyses/h0259e.JDC.PDF>.

¹²⁸ *H. Crim. Just. & Pub. Safety Subcomm.*, *supra* note 52 (statement of Rep. Byrd).

religious institution the option to hire private security teams like the public and charter schools protected under the Marjory Act.¹²⁹ However, as stated above, many of these religious schools do not have the resources to hire security,¹³⁰ and this bill did not provide funding to these institutions as the Marjory Act did for public and charter schools.¹³¹ Although Senator Gruters denied it, the justification of avoiding an overly burdensome cost simply cannot be supported unless the reasoning is that vigilante citizens will act as security.

Regardless of the reasoning and justifications urged by the proponents, the effects on children remain the same. Students attending private religious schools will now have multiple “targets” on their backs, as both schools and houses of worship are common places where violent shooters attack.¹³² There has been “a 2,500% increase in deadly attacks at houses of worship since 1999” based on an overall increase in hate crimes targeting religions and mass shootings in general.¹³³ Not only are violent attacks targeted at schools and houses of worship, but statistics show that 67% of assailants use a handgun to commit public mass shootings.¹³⁴ Further, a report on mass shootings targeted at houses of worship found that 54% of mass shooters specifically targeted Christian institutions.¹³⁵ This is concerning because, in Florida, the most common religiously affiliated private schools are Christian.¹³⁶ Children attending religious private schools in Florida now face an even higher threat of mass shootings because of the increased target on houses of worship combined with the new law allowing religious institutions to lawfully permit the most commonly used mass shooting weapon within the same building.¹³⁷

While it may be evident that children who experience a mass shooting event are often traumatized, there is also a less apparent concern for the mental health of children who recognize and fear the mere threat of mass shootings.¹³⁸ Hearing about school shootings, which has become increasingly regular in the daily news, can influence a child’s perception of school safety, even if

¹²⁹ *S. Comm. on Rules, supra* note 49 (statement of Sen. Gruters).

¹³⁰ Nathan J. Diament, *Protect America’s Houses of Worship in Year-End Appropriations Package*, THE HILL (Nov. 28, 2020, 4:00 PM), <https://thehill.com/blogs/congress-blog/homeland-security/527819-protect-americas-houses-of-worship-in-year-end>.

¹³¹ *Compare* Fla. H.R. Comm. on Judiciary, *supra* note 127, at 4–5 (noting no fiscal impact), *with* Fla. S. Comm. on Approp., C.S. for S.B. 7026 (2018) Post-Meeting Staff Analysis 42 (Feb. 28, 2018), <https://www.flsenate.gov/Session/Bill/2018/7026/Analyses/2018s07026.ap.PDF> (noting a fiscal impact of \$200,000,000).

¹³² U.S. DEP’T OF JUST., ACTIVE SHOOTER INCIDENTS 20-YEAR REVIEW, 2000-2019 at 7 (2021) [hereinafter ACTIVE SHOOTER INCIDENTS], <https://www.fbi.gov/file-repository/active-shooter-incidents-20-year-review-2000-2019-060121.pdf/view> (finding that schools were the third highest target for active shooter incidents and houses of worship were tied in seventh place).

¹³³ Jeff Mordock, *Religious Leaders Weigh Sanctuary, Security After Attacks*, WASH. TIMES (Dec. 31, 2019), <https://www.washingtontimes.com/news/2019/dec/31/religious-leaders-weigh-sanctuary-security-after-a/>.

¹³⁴ ACTIVE SHOOTER INCIDENTS, *supra* note 132, at 30.

¹³⁵ U.S. DEP’T OF HOMELAND SEC., MITIGATING ATTACKS ON HOUSES OF WORSHIP, SECURITY GUIDE 23 (2020), https://www.cisa.gov/sites/default/files/publications/Mitigating%20Attacks%20on%20Houses%20of%20Worship%20Security%20Guide_508_0_0.pdf.

¹³⁶ *Best Florida Religiously Affiliated Private Schools (2023)*, *supra* note 118.

¹³⁷ *See generally* Mordock, *supra* note 133 (showing an increased number of active shooters targeting houses of worship); ACTIVE SHOOTER INCIDENTS, *supra* note 132, at 30 (showing that 67% of assailants use handguns to commit public mass shootings).

¹³⁸ Kira Riehm et al., *Adolescents’ Concerns About School Violence or Shootings and Association with Depressive, Anxiety, and Panic Symptoms*, JAMA NETWORK OPEN (Nov. 1, 2021), <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2785658> [<https://perma.cc/JK8L-H45Q>].

a mass shooting has not occurred in their school or community.¹³⁹ Not only do children hear about these devastating events through media outlets, but many have to participate in simulated active shooter drills, which also have an adverse effect on their emotional well-being.¹⁴⁰ A 2018 study shows that more than half of adolescents aged 13 to 17 are concerned that a shooting could happen at their school.¹⁴¹ Children as young as six have stated that a school shooting is the second-highest worry they face.¹⁴²

Vedika Jawa, a high school senior, wrote an article explaining that returning to school after the pandemic sparked fear—not because she was worried about COVID-19 but because of the worry that school shootings would be on the rise again.¹⁴³ Although recognizing that, statistically speaking, the chances of dying from COVID-19 were higher than in a school shooting, she wrote that the fear is based on a lack of control.¹⁴⁴ Students can protect themselves from getting coronavirus by wearing masks or getting vaccinated, but feel helpless when it comes to protecting themselves from school shootings.¹⁴⁵ Unfortunately, her worry unfolded as the United States returned to normal in 2021, and we saw 45 mass shootings in a “single month between March 16 and April 15.”¹⁴⁶ Vedika, like many other students, is crying for help from the people in charge of protecting her.¹⁴⁷ The government quickly responded to the public health crisis of coronavirus—which shows that public officials can help in times of national emergencies—and thus, the question that remains in students’ minds is why they continue to ignore the nationwide epidemic of gun violence in schools.¹⁴⁸

The fear of a mass shooting is an increasingly prevalent source of anxiety for school children.¹⁴⁹ Recent studies have shown that for high school students, not only does this anxiety affect emotional well-being, but it can also lead to a decrease in academic performance.¹⁵⁰ Students that feel unsafe at school have lower academic achievement, lower school engagement, and increased absenteeism.¹⁵¹ These consequences can have long-term effects on children, such

¹³⁹ *Id.*

¹⁴⁰ Eugene Geist, *Reducing Anxiety in Children: Creating Emotionally Safe Places for Children to Learn*, ARCHIVES NEUROLOGY & NEUROSCIENCE, Nov. 6, 2019, at 1, 1.

¹⁴¹ Nikki Graf, *A Majority of U.S. Teens Fear a Shooting Could Happen at Their School, and Most Parents Share Their Concern*, PEW RSCH. CTR. (Apr. 18, 2018), <https://www.pewresearch.org/fact-tank/2018/04/18/a-majority-of-u-s-teens-fear-a-shooting-could-happen-at-their-school-and-most-parents-share-their-concern/>.

¹⁴² Child. ’s Def. Fund, *School Shootings Spark Everyday Worries: Children and Parents Call for Safe Schools and Neighborhoods*, YOU GOV 1 (Sept. 18, 2018), <https://www.childrensdefense.org/wp-content/uploads/2018/09/YouGov-SafeSchools-Final-Sep-18-2018.pdf>.

¹⁴³ Vedika Jawa, *I’m Not Afraid of COVID-19, I’m Afraid of School Shootings*, THE ATL. (Aug. 16, 2021), <https://www.theatlantic.com/ideas/archive/2021/08/school-shootings-pandemic/619727/>.

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ David Frum, *How to Persuade Americans to Give Up Their Guns*, THE ATL. (Sept. 1, 2021), <https://www.theatlantic.com/magazine/archive/2021/10/responsible-gun-ownership-is-a-lie/619811/>.

¹⁴⁷ Jawa, *supra* note 143.

¹⁴⁸ *Id.*

¹⁴⁹ Riehm et al., *supra* note 138.

¹⁵⁰ Maybell Romero, *Educational Environments and the Federal Right to Education in the Wake of Parkland*, 73 U. MIA. L. REV. 731, 759 (2019).

¹⁵¹ Carolyn Côté-Lussier & Caroline Fitzpatrick, *Feelings of Safety at School, Socioemotional Functioning, and Classroom Engagement*, 58 J. ADOLESCENT HEALTH 543, 544 (2016).

as not being accepted into college and ultimately earning lower wages.¹⁵² The reality is that many children may not be focusing on school because they are busy calculating escape routes and scoping out potential hiding spots in case their biggest fear happens at their school.¹⁵³

This generalized fear of school shootings will likely intensify for school-aged children attending private religious schools in Florida when they learn that anyone with a concealed carry permit may now bring weapons into their schools. Many children do not support having armed officers or teachers in their schools.¹⁵⁴ Forty-eight percent of children are unsure or outright oppose having an armed officer in their school.¹⁵⁵ Some children fear that armed officers will abuse their power.¹⁵⁶ Further, only one-third of children indicated that they felt arming teachers would help keep them safe in school.¹⁵⁷ They do not trust teachers with weapons due to bias and subtle racist attitudes.¹⁵⁸ If children are afraid to have armed teachers and officers who must complete significant training under the Marjory Act,¹⁵⁹ it is logical to conclude that they will feel even more frightened to attend a school where random citizens may be carrying a firearm after easily obtaining a concealed carry permit.¹⁶⁰

B. Religious Institutions

With the passage of Florida's law allowing religious institutions to permit concealed carry holders to bring their weapons into houses of worship, one may reasonably assume that this was a victory in the eyes of the religious institutions. However, that is not necessarily true.¹⁶¹ One of the purposes behind House Bill 259 was to follow in Texas's footsteps by allowing religious institutions to determine whether concealed carry was permitted on their premises.¹⁶² Representative Byrd stated that because Texas's law allowed concealed carry in a house of worship, a good guy with a gun was able to stop a bad guy with a gun during a church shooting.¹⁶³ On the other hand, the Florida Conference of Catholic Bishops filed a letter of opposition stating that the organization strongly opposed the bill because it goes against traditional policies in Catholic schools, will invite violence, and creates an added burden on the "majority of schools who oppose the proposed change."¹⁶⁴

¹⁵² Louis-Philippe Beland & Dongwoo Kim, *The Effect of High School Shootings on Schools and Student Performance*, 38 EDUC. EVALUATION & POL'Y ANALYSIS 113, 124 (2016).

¹⁵³ Todd DeMitchell & Christine Rath, *Armed and Dangerous – Teachers? A Policy Response to Security in Our Public Schools*, 2019 BYU EDUC. & L.J. 63, 67 (2019).

¹⁵⁴ Child.'s Def. Fund, *supra* note 142.

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ See FLA. STAT. § 1006.12 (2022).

¹⁶⁰ See FLA. DEP'T OF AGRIC. & CONSUMER SERVS. DIV. OF LICENSING, *supra* note 71.

¹⁶¹ See Kimberly Winston, *God and Guns, How Religious Leaders Have Responded to Mass Shootings in Places of Worship*, FIVETHIRTYEIGHT (Nov. 4, 2021), <https://fivethirtyeight.com/features/god-and-guns/> (noting that two Christian pastors who experienced mass shootings have different views on gun control).

¹⁶² *H. Crim. Just. & Pub. Safety Subcomm.*, *supra* note 52 (statement of Rep. Byrd).

¹⁶³ *Id.*

¹⁶⁴ Letter from Michael B. Sheedy, Exec. Dir., Florida Conf. of Cath. Bishops, to The Hon. Jayer Williamson, Florida House of Reps. (Mar. 8, 2021) (on file with author).

Other religious organizations have spoken out regarding the recent increase in attacks on houses of worship and expressed concerns over guns in their institutions.¹⁶⁵ Faiths United to Prevent Gun Violence, a coalition of over 50 faith-based organizations, said that as people of faith, they do not align with the “societal culture of death that accepts violence as the norm and relies solely on guns for security.”¹⁶⁶ The Presiding Bishop of the Episcopal Church said that arming congregants for self-defense is “antithetical to the peaceful nature of religious gatherings and ultimately counterproductive, since the proliferation of firearms – regardless of motivation – makes gun violence more, not less, likely.”¹⁶⁷ Religious institutions fear that “[n]ormalizing the carrying of concealed weapons” increases the likelihood of gun violence by making it easier for those who desire to inflict harm to bring their guns into churches without causing alarm or raising suspicion.¹⁶⁸

The permissive casual carrying of concealed weapons can also lead to people disregarding the religious institution’s prohibition of firearms on their premises.¹⁶⁹ The fear that policies will be ignored forces houses of worship to implement additional security measures: a cost many congregations will be unlikely to afford.¹⁷⁰ Many religious institutions rely on donations from congregants to fund their activities,¹⁷¹ and the percentage of American households that donate money has significantly decreased from 46.5% in 2000 to only 29% in 2018.¹⁷² The reduced funding is at odds with the high costs of protecting a house of worship.¹⁷³ Installing force-resistant doors, protective fencing, shatterproof windows, and surveillance systems can cost tens of thousands of dollars.¹⁷⁴ One Rabbi sought to protect his congregation by installing security cameras, covering windows to make them shatterproof, and installing a metal detector, which he estimated would cost around \$200,000.¹⁷⁵ Hiring armed guards from a private security company will cost the synagogue \$40 an hour for each guard.¹⁷⁶ It is estimated that hiring a school-based police officer costs \$50,000 to \$80,000 annually.¹⁷⁷ Since many

¹⁶⁵ See Letter from Faiths United to Prevent Gun Violence, to the Committee on the Judiciary, U.S. Senate (May 17, 2021) (on file with author); Brief of Presiding Bishop and President of the House of Deputies of the Episcopal Church et al. as Amici Curiae Supporting Respondents at 10, *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 142 S. Ct. 2111 (2022) (No. 20-843) [hereinafter Brief of Presiding Bishop].

¹⁶⁶ Letter from Faiths United to Prevent Gun Violence, *supra* note 165.

¹⁶⁷ Brief of Presiding Bishop, *supra* note 165, at 10.

¹⁶⁸ *Id.* at 18.

¹⁶⁹ *Id.* at 19.

¹⁷⁰ *Id.* at 23.

¹⁷¹ See Michelle Conlin, *Empty Pews, Empty Collection Baskets: Coronavirus Hits U.S. Church Finances*, REUTERS (Apr. 11, 2020, 6:09 AM), <https://www.reuters.com/article/us-health-coronavirus-usa-churchfinance/empty-pews-empty-collection-baskets-coronavirus-hits-u-s-church-inances-idUSKCN21T0EH>.

¹⁷² Sasha Zarins et al., *The Giving Environment: Understanding Pre-Pandemic Trends in Charitable Giving*, IND. UNIV.–PURDUE UNIV. INDIANAPOLIS 17 (July 2021), <https://scholarworks.iupui.edu/bitstream/handle/1805/26290/giving-environment210727.pdf>.

¹⁷³ Brief of Presiding Bishop, *supra* note 165, at 28.

¹⁷⁴ Diamant, *supra* note 130.

¹⁷⁵ Ben Sales, *Here’s What it Costs to Put Your Synagogue Under Armed Guard*, JEWISH TELEGRAPHIC AGENCY (Nov. 13, 2018, 11:48 AM), <https://www.jta.org/2018/11/13/united-states/heres-costs-put-synagogue-armed-guard>.

¹⁷⁶ *Id.*

¹⁷⁷ Edward W. Hill, *The Cost of Arming Schools: The Price of Stopping a Bad Guy with a Gun*, URBAN PUBL’NS (Mar. 28, 2013), https://engagedscholarship.csuohio.edu/cgi/viewcontent.cgi?article=1677&context=urban_facpub.

congregations struggle to pay for essential costs such as clergy and utilities, these additional expenses are nearly impossible and will leave many without meaningful protection.¹⁷⁸

Beyond additional security measures, religious institutions may also have to obtain specialized insurance that helps mitigate the costs of an armed attack.¹⁷⁹ Active shooter insurance for schools and churches can range from \$1 million to \$75 million.¹⁸⁰ These “active shooter” policies typically cover “victim lawsuits, building repairs, legal fees, medical expenses, and trauma counseling.”¹⁸¹ Insurance coverage will be considered necessary based on the potential liability religious institutions may face if their security measures are deemed inadequate.¹⁸² Tort law provides that a premises owner is responsible for injuries caused by shootings, but only if the acts by the shooter were foreseeable.¹⁸³ In today’s society, mass shootings are no longer a rarity.¹⁸⁴ Because they have been happening with an increased frequency, courts are more willing to find these events as foreseeable and thus hold the owner of the premises liable.¹⁸⁵ Ultimately, religious institutions believe that it is unrealistic and unfair to put the burdens and costs on them to prevent the carrying of concealed weapons onto their grounds.¹⁸⁶

IV. Do Good Guys with Guns Stop Bad Guys with Guns?

As stated, the primary purpose of this law was to close the gap created by the Marjory Act by allowing religious institutions with schools to hire their own security.¹⁸⁷ However, unlike the Marjory Act, there are no requirements to serve as security personnel.¹⁸⁸ Senator Farmer asked whether a priest should be carrying a gun to defend against a “crazy” person who comes in with a gun, and Senator Gruters replied that if they are a concealed carry permit holder, they have that ability.¹⁸⁹ Thus, it is safe to assume that under § 790.06(13) of the Florida Statutes, anyone may serve as a security officer, which leads to the discussion of whether average citizens would be able to provide adequate protection.

In the context of mass shootings, there is an intense debate over whether good guys with guns stop bad guys with guns.¹⁹⁰ Opponents of stricter gun laws argue that law-abiding citizens

¹⁷⁸ Diament, *supra* note 130.

¹⁷⁹ Brief of Presiding Bishop, *supra* note 165, at 27.

¹⁸⁰ *Id.*

¹⁸¹ Noor Zainab Hussain & Carolyn Cohn, *Mass Shooting Insurance in High Demand as U.S. Emerges from Lockdown*, REUTERS (May 13, 2021, 11:11 AM), <https://www.reuters.com/business/legal/mass-shooting-insurance-high-demand-us-emerges-lockdown-2021-05-13/>.

¹⁸² Brief of Presiding Bishop, *supra* note 165, at 25.

¹⁸³ Melanie Morgan Norris, *Coverage Issues in Active Shooter Claims: The Insured’s and Victim’s Perspectives*, NAT’L L. REV. (Sept. 30, 2021), https://www.natlawreview.com/article/coverage-issues-active-shooter-claims-insured-s-and-victim-s-perspectives#google_vignette.

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ Brief of Presiding Bishop, *supra* note 165, at 31.

¹⁸⁷ *H. Crim. Just. & Pub. Safety Subcomm.*, *supra* note 52 (statement of Rep. Byrd).

¹⁸⁸ See FLA. STAT. § 790.06(13) (2022).

¹⁸⁹ *S. Comm. on Rules*, *supra* note 49 (statements of Sen. Farmer & Sen. Gruters).

¹⁹⁰ Karol Mazur, *The “Good Guy With a Gun” Concept in the American Gun Culture and Gun Control Policy*, 25 ASEJ SCI. J. BIELSKO-BIALA SCH. FIN. & L. 5, 5 (2021).

with concealed carry permits can stop assailants who commit mass shootings.¹⁹¹ They also say that criminals are deterred from committing violent acts when they know their victims may be armed,¹⁹² and thus “gun-free zones” are dangerous because they create vulnerable targets and do not stop mass shooters.¹⁹³ Another common argument is that criminals often obtain their guns illegally.¹⁹⁴ Because of this, states with stricter gun laws that prevent law-abiding citizens from lawfully obtaining a concealed carry permit experience higher crime and homicide rates.¹⁹⁵

On the other side of the debate, proponents of stricter gun laws believe that the presence of more guns leads to an increased likelihood of violence.¹⁹⁶ Because mass shootings often happen in crowded public places, civilian intervention is likely to add to the death toll unless they are well-trained.¹⁹⁷ Proponents also argue that gun-free zones are effective and should not be eliminated¹⁹⁸ because mass shooters target places with emotional value rather than seek out areas that lack guns.¹⁹⁹ Lastly, they argue that mass shooters often obtain firearms from people they know rather than purchasing them legally or illegally; thus, stricter gun laws can help reduce violent crime.²⁰⁰ This section of the article does not propose a solution to mass shootings in schools or religious institutions. Instead, it demonstrates the overall argument that lenient gun laws allowing more people to carry firearms in “sensitive places” worsens, not help, the issue of mass shootings.

A. Allowing Concealed Carry Does Not Stop or Prevent Mass Shootings

Louis Valdez from Gun Owners of America said, “When seconds count, cops are minutes away.”²⁰¹ Valdez, the NRA, and many other opponents of stricter gun laws commonly argue that the “only thing that stops a bad guy with a gun is a good guy with a gun.”²⁰² This theory relies on an underlying premise that armed “good guys” would not only confront the shooter but also be

¹⁹¹ See *Why Gun Control Doesn't Work*, NRA-ILA INST. FOR LEGIS. ACTION, <https://www.nraila.org/why-gun-control-doesn-t-work/> (last visited Jan. 4, 2021) (“Mass murderers have repeatedly been deterred or stopped by citizens carrying lawfully concealed firearms.”).

¹⁹² *Id.*

¹⁹³ Melissa Gonzalez Rock, *The Effects of Gun-Free Zones and Mass School Shootings* (Feb. 2020) (Ph.D. dissertation, Walden University) (on file with ScholarWorks, Walden University).

¹⁹⁴ *Why Gun Control Doesn't Work*, *supra* note 191.

¹⁹⁵ *Id.*

¹⁹⁶ Brief of Presiding Bishop, *supra* note 165, at 20.

¹⁹⁷ Mahita Gajanan & Sanya Mansoor, ‘Good Guys with Guns’ Can Rarely Stop Mass Shootings, and Texas and Ohio Show Why, *TIME* (Aug. 7, 2019, 3:13 PM), <https://time.com/5644578/good-guys-with-guns-el-paso-dayton/>.

¹⁹⁸ Rock, *supra* note 193.

¹⁹⁹ Lizz Schumer, *Common Myths Too Many People Get Wrong About Gun Control*, SHOWBIZ CHEATSHEET (May 25, 2018), <https://perma.cc/GAX7-3XV4>.

²⁰⁰ *How to Stop Shootings and Gun Violence in Schools, A Plan to Keep Students Safe*, EVERYTOWN FOR GUN SAFETY (Aug. 19, 2022), <https://everytownresearch.org/report/preventing-gun-violence-in-american-schools/> [<https://perma.cc/T9RR-CQFX>].

²⁰¹ *H. Crim. Just. & Pub. Safety Subcomm.*, *supra* note 52 (statement of Louis Valdez).

²⁰² Evan DeFilippis & Devin Hughes, *5 Arguments Against Gun Control — And Why They Are All Wrong*, *BALT. SUN* (July 8, 2016, 8:00 AM), <https://www.baltimoresun.com/la-oe-defilippis-hughes-gun-myths-debunked-20160708-snap-story.html>.

able to stop the shooting.²⁰³ While many people would like to believe that they would confront the shooter in such a situation, the reality is that people often do not respond the way they think they would, despite their best intentions, because of the chaos that ensues during an active shooter situation.²⁰⁴

While some mass shootings have been stopped by average citizens that kill the shooter,²⁰⁵ that is rarely the outcome.²⁰⁶ The Federal Bureau of Investigation (FBI) conducts yearly reports of active shooter incidents in the United States.²⁰⁷ The FBI defines an active shooter “as one or more individuals actively engaged in killing or attempting to kill people in a populated area.”²⁰⁸ The word “active” implies that both citizens and law enforcement personnel have the opportunity to affect the outcome of the situation.²⁰⁹ From 2000 to 2019, there were 345 active shooters, with 150 shooters being apprehended by the police or citizens; 119 shooters committing suicide; 67 shooters killed by the police; 4 shooters killed by citizens; and 5 shooters at large.²¹⁰

The FBI found that 62 active shooter incidents occurred in educational environments, including public and private schools.²¹¹ Twenty of those incidents resulted in the shooter committing suicide; 3 shooters were killed by police at the scene; 36 were apprehended by police, including 19 shooters that were restrained by citizens; and 5 shooters were apprehended by police at another location.²¹² Fifteen active shooter incidents occurred in houses of worship, including public and private facilities and commercial properties that religious institutions used.²¹³ Five of those shooters committed suicide; 5 were apprehended by police, including 3 shooters that were restrained by citizens; 3 shooters were apprehended by police at another location; and 1 shooter was killed at the scene by a citizen.²¹⁴

The one shooter killed by a citizen in a house of worship refers to the West Freeway Church of Christ shooting, where a volunteer member of the church’s security team fired a single

²⁰³ See David French, *In Missouri, a Good Guy with a Gun Stepped Up —So Can You*, NAT’L REV. (Aug. 9, 2019, 4:06 PM), <https://www.nationalreview.com/2019/08/in-missouri-a-good-guy-with-a-gun-stepped-up-so-can-you/> (stating that private citizens can stop mass shootings by preparing to be brave and training to learn how to defend themselves and others).

²⁰⁴ Gajanan & Mansoor, *supra* note 197.

²⁰⁵ John R. Lott, *Corrections to the FBI’s Reports on Active Shooting Incidents*, CRIME PREVENTION RSCH. CTR. (June 1, 2021), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3857331 (noting incidents where a public mass shooting would have likely occurred if a person legally carrying a firearm was not present such as a back-to-school event that a concealed carry permit holder quickly stopped; a concealed carry permit holder stopped a masked man who entered a McDonald’s and starting firing his gun; and a husband who shot his wife in an office and then turned the gun to other office staff when a concealed carry permit holder shot him).

²⁰⁶ See ACTIVE SHOOTER INCIDENTS, *supra* note 132, at 4 (stating that 4 out of 345 active shooters were killed by citizens).

²⁰⁷ *Id.* at 2.

²⁰⁸ U.S. DEP’T OF JUST., ACTIVE SHOOTER INCIDENTS IN THE UNITED STATES IN 2019 at 3 (2020), <https://www.fbi.gov/file-repository/active-shooter-incidents-in-the-us-2019-042820.pdf/view>.

²⁰⁹ *Id.*

²¹⁰ ACTIVE SHOOTER INCIDENTS, *supra* note 132, at 4.

²¹¹ *Id.* at 13.

²¹² *Id.* at 14.

²¹³ *Id.* at 20.

²¹⁴ *Id.*

shot at the armed gunman.²¹⁵ The Texas Attorney General encouraged other states to follow its lead and “allow citizens to carry concealed weapons for self-defen[s]e.”²¹⁶ He also stated that “this is the model for the future.”²¹⁷ Dr. John Lott, Jr. wrote a paper criticizing the FBI’s report arguing that it left out incidents where a citizen lawfully carrying a concealed weapon stopped a shooter.²¹⁸ The FBI report stated that from 2014 to 2019, only 6.2% of active shooters were stopped by civilians with a lawful concealed carry permit.²¹⁹ However, Dr. Lott argues this figure should be 15% based on six cases the FBI excluded from its report.²²⁰ Even assuming that civilian citizens stop 15% of shooters, should this be the model for the future when almost half of the shooters are stopped by being apprehended by law enforcement or restrained by civilians?²²¹ Although some argue that allowing concealed carry will stop many of these mass shootings, the statistics show that an overwhelming number of assailants commit suicide or are stopped by police or citizens who restrain them.²²²

Could the good guys with guns stop the bad guys with guns? Even beyond the statistics, reports show that many average concealed carry permit holders could not stop the assailant even if they wanted to.²²³ The National Gun Victims Action Council conducted a study of 77 participants with different levels of training by putting them in realistic self-defense scenarios.²²⁴ Seven “of the participants shot an innocent bystander” in one scenario.²²⁵ The majority of participants “who engaged the ‘bad guy’ were killed,” and 23% fired at a suspect who did not pose a threat.²²⁶ Defending other people during an active shooter incident, regardless of training or expertise, is a very different situation than the usual case of self-defense.²²⁷

Arkansas State Senator Jeremy Hutchinson learned that understanding who the “bad guy” is during an active shooter situation is not as easy as some like to make it seem.²²⁸ During a simulation, Senator Hutchinson accidentally shot the person playing the teacher, not the shooter.²²⁹ In a real-life scenario, Johnny Hurley shot an active shooter with his handgun and then picked up the rifle the shooter was carrying.²³⁰ He was shot dead by mistaken police

²¹⁵ *Texas Church Shooting: Gunman Killed by Churchgoer Named*, BBC (Dec. 30, 2019), <https://www.bbc.com/news/world-us-canada-50952443>.

²¹⁶ *Id.*

²¹⁷ *Id.*

²¹⁸ Lott, *supra* note 205.

²¹⁹ *Id.*

²²⁰ *Id.*

²²¹ ACTIVE SHOOTER INCIDENTS, *supra* note 132, at 4 (finding that 150 of the 333 incidents were stopped by police apprehending the shooter, including citizens restraining the shooter in 33 out of the 150 incidents).

²²² *Id.*

²²³ DeFilippis & Hughes, *supra* note 202.

²²⁴ *Id.*

²²⁵ *Id.*

²²⁶ *Id.*

²²⁷ Gajanan & Mansoor, *supra* note 197.

²²⁸ DeMitchell & Rath, *supra* note 153, at 90.

²²⁹ *Id.*

²³⁰ Julia Cardi & Marianne Goodland, *Should Armed Civilians Intervene as ‘Good Samaritans’ in Active Shootings? The Issue Divides Experts*, DENVER GAZETTE (July 12, 2021), https://denvergazette.com/news/local/should-armed-civilians-intervene-as-good-samaritans-in-active-shootings-the-issue-divides-experts/article_95a14f76-d9dc-11eb-8159-d7cc46ab6924.html.

gunfire.²³¹ Because police officers, who are trained to handle active shooter incidents, have mistakenly identified assailants, it raises serious concerns that we would allow average citizens to make split-second determinations of who the bad guy is during these chaotic situations.²³² Imagining an active shooter situation in a crowded private religious school where dozens of people may be carrying firearms, which is now lawful in Florida, illustrates this danger. How will anyone know who the actual assailant is if everyone has their guns drawn? Innocent children may pass through the hallways and get caught in the crossfire. “More guns may lead to more mistakes, and these mistakes can be deadly.”²³³

B. Armed Security Guards Do Not Stop or Prevent Mass Shootings

Another common argument is that gun-free zones should be abolished because they create an attractive target for active shooters, and instead, we should be putting more guns in the hands of teachers and armed security guards.²³⁴ First, this argument ignores the wishes of parents, students, and teachers.²³⁵ Second, this argument ignores the reality that armed guards do not deter or stop mass shootings²³⁶ and usually result in more harm than good.²³⁷ When looking at school shootings, more people die when an armed officer is present than when there is not.²³⁸ An armed guard was at the scene in almost 24% of the shootings, and the death rate was 2.82 times greater when an armed guard was present.²³⁹ Jillian Peterson, who conducted the study, suggested that because many school shooters are suicidal, an armed guard may act as an incentive rather than a deterrent.²⁴⁰ She further explained that a shooter might bring more weapons or create a more detailed plan if they knew the school had an armed officer.²⁴¹

One school shooting incident happened at Santa Fe High School in Texas, where two armed police officers were present.²⁴² The school board president stated that he believed the policies and procedures they had in place worked but admitted defeat, saying, “If someone wants to get into a school to create havoc, they can do it.”²⁴³ Another incident occurred at Marshall

²³¹ *Id.*

²³² *Id.*

²³³ DeMitchell & Rath, *supra* note 153, at 91.

²³⁴ Rock, *supra* note 193.

²³⁵ *The Truth About School Shootings*, GIFFORDS L. CTR. TO PREVENT GUN VIOLENCE (Feb. 11, 2019), <https://giffords.org/lawcenter/report/the-truth-about-school-shootings/>; Child.’s Def. Fund, *supra* note 142.

²³⁶ Riham Feshir, *New Research Finds Armed Officers Increases Likelihood of Mortality at School Shootings*, MPR NEWS (Feb. 16, 2021, 1:00 PM), <https://www.mprnews.org/story/2021/02/16/research-finds-armed-officers-increases-mortality-at-school-shootings>.

²³⁷ See *The Truth About School Shootings*, *supra* note 235 (“The more guns that are coming into the equation, the more volatility and the more risk there is of somebody getting hurt.”).

²³⁸ Jillian Peterson et al., *Presence of Armed School Officials and Fatal and Nonfatal Gunshot Injuries During Mass School Shootings, United States, 1980-2019*, JAMA NETWORK OPEN (Feb. 16, 2021), https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2776515?utm_source=For_The_Media&utm_medium=referral&utm_campaign=ftm_links&utm_term=021621.

²³⁹ *Id.*

²⁴⁰ Feshir, *supra* note 236.

²⁴¹ *Id.*

²⁴² Todd C. Frankel et al., *Santa Fe High School Had a Shooting Plan, Armed Officers and Practice. Ten People Still Died*, TEX. TRIB. (May 20, 2018, 1:00 PM), <https://www.texastribune.org/2018/05/20/santa-fe-high-school-had-shooting-plan-armed-officers-and-practice-ten/>.

²⁴³ *Id.*

County High School, where an armed guard was present but could not stop the shooter before he killed 2 people and injured another 18.²⁴⁴ In response to this shooting, a Kentucky state senator voiced his support of a pending bill to allow teachers and staff to carry guns, arguing that if someone is present with a weapon, they will stop the assailant or calm the situation.²⁴⁵ This is an ironic response considering an armed guard—who could not stop the assailant or manage the situation—was present.

One of the most appalling responses by an armed security guard was the actions of Scot Peterson, who was present at the Parkland High School mass shooting.²⁴⁶ Two years before the tragedy at Parkland, Peterson was notified that the shooter had posted pictures on social media with guns stating that he planned “to shoot up the school.”²⁴⁷ Eighteen months before the shooting, a student had expressed concerns about the shooter, which resulted in an evaluation of the student where Peterson was present.²⁴⁸ After the evaluation, Peterson said that the shooter should be “Baker Acted” and that he would search his home for a gun.²⁴⁹ However, Peterson changed his mind about Baker Acting the shooter and never went to his house to search for any firearms.²⁵⁰ On the day of the shooting, Peterson was alerted to a suspicious subject on campus but failed to order a “Code Red,” which would have immediately locked down the school, and thus the shooter entered the building.²⁵¹ After hearing gunshots, Peterson, who was outside, hid between two concrete walls to keep himself out of harm’s way.²⁵² Peterson remained outside for the entire duration of the shooting spree.²⁵³ The court found that Peterson had “‘intentionally, knowingly and purposely’ chose[n] to remain outside . . . ‘with a conscious and intentional indifference to consequences and with the knowledge that damage [was] likely to be done’ to the students and teachers.”²⁵⁴

Based on the above situations where armed guards with training in firearm use were unable or, in Peterson’s case, unwilling to stop an active shooter, it is unreasonable to assume that average citizens with concealed carry permits will have any greater success in protecting fellow bystanders. Not only have there been multiple failures to protect students, but there have also been many situations where armed guards or police officers have injured children in

²⁴⁴ Ryland Barton, *Kentucky Moves to Add Guns to Schools After School Shooting*, NPR (Feb. 20, 2018, 5:51 PM), <https://www.npr.org/2018/02/20/587368514/kentucky-moves-to-add-guns-to-schools-after-school-shooting>.

²⁴⁵ *Id.*

²⁴⁶ Trib. News Serv., *Ex-deputy: Please Don’t Blame Me for Parkland School Deaths*, TAMPA BAY TIMES (Oct. 17, 2021), <https://www.tampabay.com/news/florida/2021/10/17/ex-deputy-please-dont-blame-me-for-parkland-school-deaths/>.

²⁴⁷ Peterson v. Pollack, 290 So. 3d 102, 105 (Fla. 2020).

²⁴⁸ *Id.*

²⁴⁹ *Id.*

²⁵⁰ *Id.*

²⁵¹ *Id.* at 106.

²⁵² *Id.*

²⁵³ *Pollack*, 290 So. 3d at 107.

²⁵⁴ *Id.* at 114.

schools.²⁵⁵ A study found that from 2016 to 2018, school police officers “had pepper-sprayed students at least 32 times and body slammed, tackled, or choked students at least 15 times.”²⁵⁶

In the last five years, there have been over 100 reported incidents where guns were mishandled at schools.²⁵⁷ There were 39 incidents where a firearm was left accessible to children, such as leaving the gun in a bathroom, school bus, or unattended purse, as well as an incident where a teacher was helping a child do a cartwheel when his loaded gun with 19 rounds of ammunition fell out his waistband.²⁵⁸ There were 20 incidents where a gun was unintentionally discharged: 11 resulted in injuries to parents, school personnel, and students.²⁵⁹ Six incidents involved mishandling guns during discipline, such as school personnel threatening to shoot students and children pulling the trigger of officers’ guns while holstered.²⁶⁰ Twenty incidents involved guns used in times of personal stress or conflict, including confrontations between parents in the parking lot who fired at each other; a school resource officer that shot himself when students were present at school; and a teacher barricading himself in an empty classroom and shooting a bullet out of the window.²⁶¹

Regardless of the argument over whether gun-free zones should continue, it is clear that the answer is not to add more armed security. Schools will continue to be targets even when there are armed officers present.²⁶² Children already have to worry about mass shootings happening at their schools. We should not add the potential of being threatened by teachers or officers with a gun or worrying about being an innocent bystander during an accidental shooting to their list of concerns.

C. Stricter Gun Laws Can Help Prevent Mass Shootings

Gun rights activists often argue that guns do not kill people; people kill people.²⁶³ Because supporters do not see guns as the source of the problem, they believe that stricter gun laws, such as conducting background checks, do nothing to prevent crime because most criminals obtain firearms through illegal means or by otherwise avoiding the process of getting one through a retail source.²⁶⁴ According to the NRA, gun control is a barrier to law-abiding citizens obtaining a firearm, which prevents them from helping reduce violent crime.²⁶⁵ Spokespersons for the NRA frequently respond to mass shootings by blaming everything but the

²⁵⁵ Kelly Drane, *Every Incident of Mishandled Guns in Schools*, GIFFORDS L. CTR. TO PREVENT GUN VIOLENCE (July 22, 2022), <https://giffords.org/lawcenter/report/every-incident-of-mishandled-guns-in-schools/> [<https://perma.cc/8FHF-BVRK>].

²⁵⁶ Alex Yablon, *Do Armed Guards Prevent School Shootings?*, TRACE (Apr. 6, 2019), <https://www.thetrace.org/2019/04/guns-armed-guards-school-shootings/>.

²⁵⁷ Drane, *supra* note 255.

²⁵⁸ *Id.*

²⁵⁹ *Id.*

²⁶⁰ *Id.*

²⁶¹ *Id.*

²⁶² Feshir, *supra* note 236.

²⁶³ DeMitchell & Rath, *supra* note 153, at 81.

²⁶⁴ *Why Gun Control Doesn't Work*, *supra* note 191.

²⁶⁵ *Id.*

source of the problem—the ease of access to firearms in the United States.²⁶⁶ They have attacked a South Carolina state legislator voting against concealed carry in churches; military bases’ failure to be armed; the United States’ inability to track people with mental health problems; and not using federal funds to put police officers in every school.²⁶⁷

Regardless of whatever or whoever the NRA and its supporters like to shift the blame to, it cannot be denied that the common denominator in every mass shooting is a gun.²⁶⁸ The argument that guns do not kill people—people kill people—is an oxymoron.²⁶⁹ It is true, literally speaking, that guns by themselves do not kill people.²⁷⁰ However, guns are dangerous tools that are purposefully designed for and intended to be used to shoot something or someone, thus supporting the common sense argument that guns, in the hands of people, do kill people.²⁷¹ A more realistic view is that there would be no gun deaths if there were no guns.²⁷²

Despite this apparent truth, the NRA still pushes to loosen gun laws and put more guns in the hands of law-abiding citizens.²⁷³ The problem with having more guns in the United States is that the NRA is correct that most criminals do not obtain firearms lawfully, and that is especially true for school shooters.²⁷⁴ The vast majority of students who commit gun violence at their schools got the firearm from their homes.²⁷⁵ Although a logical conclusion to this recurring issue would be to legally require parents to lock up their guns, it is a law that many people are against.²⁷⁶ Safe storage laws require gun owners to store unattended guns in a specified manner to prevent access by minors and persons who are legally prohibited from possessing firearms.²⁷⁷ Only five states currently have a safe storage law.²⁷⁸

Child access prevention laws impose penalties on persons who fail to secure an unattended firearm, leaving them accessible to an unsupervised minor.²⁷⁹ Only 21 states have child access prevention laws that impose liability on parents, and only 19 of those states and the

²⁶⁶ Anna Merod, *How the NRA Has Responded to Mass Shootings Over the Years*, NBC NEWS (June 15, 2016, 7:32 AM), <https://www.nbcnews.com/storyline/orlando-nightclub-massacre/how-nra-has-responded-mass-shootings-over-years-n592551>.

²⁶⁷ *Id.*

²⁶⁸ *S. Comm. on Rules*, *supra* note 49 (statement of Sen. Farmer).

²⁶⁹ See Marshall Davis, *People Kill People*, BLOGSPOT (June 4, 2022, 8:58 AM), <https://revmdavis.blogspot.com/2022/06/people-kill-people.html> (“Like all marketing slogans, this one is designed to obscure the facts. It takes both people and guns to kill people.”).

²⁷⁰ DeMitchell & Rath, *supra* note 153, at 81.

²⁷¹ *Id.*

²⁷² Rachel Nuwer, *What If All Guns Disappeared?*, BBC (Apr. 17, 2018), <https://www.bbc.com/future/article/20180417-what-would-happen-if-all-guns-disappeared>.

²⁷³ See *Why Gun Control Doesn't Work*, *supra* note 191.

²⁷⁴ *The Truth About School Shootings*, *supra* note 235.

²⁷⁵ *Id.*

²⁷⁶ Emma Platoff, *The Santa Fe Shooter Used His Father's Guns. But His Parents Aren't Liable Under Texas Law*, TEX. TRIB. (May 21, 2018, 5:00 PM), <https://www.texastribune.org/2018/05/21/texas-has-law-aimed-keeping-parents-guns-out-kids-hands-its-reactive-n/>.

²⁷⁷ *Child Access Prevention*, GIFFORDS L. CTR. TO PREVENT GUN VIOLENCE, <https://giffords.org/lawcenter/gun-laws/policy-areas/child-consumer-safety/child-access-prevention/> [<https://perma.cc/D55S-U6RR>].

²⁷⁸ *Id.*

²⁷⁹ *Id.*

District of Columbia impose criminal penalties.²⁸⁰ However, there are several exceptions to these state laws, including when the firearm is stored in a locked container, when the minor accesses the gun by illegally entering the premises, or when the child has completed a firearm safety course.²⁸¹ Besides criminal liability, some states impose civil liability against parents who fail to store their weapons securely to prevent children’s access.²⁸² However, facing the threat of only civil liability, many people will discount the law and “take their chances.”²⁸³

One family, who the NRA would define as “law-abiding citizens” because they lawfully obtained their firearms, took that chance with their son, Ethan Crumbley.²⁸⁴ Ethan’s father gifted him a gun for Christmas and failed to secure it, which meant Ethan had free access to it.²⁸⁵ This case is particularly problematic because there were several warning signs that Ethan posed a threat to others, such as when his teacher found drawings of a handgun with the phrases “help me” and “blood everywhere.”²⁸⁶ An earlier incident occurred when Ethan was caught by his teacher searching for ammunition during class on his phone.²⁸⁷ When his mother was informed of his behavior, she texted Ethan, telling him that she was not mad and he needed to “learn not to get caught.”²⁸⁸ The next day, Ethan shot and killed four classmates at Oxford High School.²⁸⁹

By insisting on more lenient gun laws, such as Florida’s, the NRA seems to disregard the reality that there are many irresponsible gun owners.²⁹⁰ When advocating for these permissive gun laws, some lawmakers use the concept of concealed carry as a crutch to create an illusion that the law provides a greater level of safety.²⁹¹ They do this by arguing that permit holders are more skilled, proficient, and careful in handling guns.²⁹² However, this is simply not true.²⁹³ Thirty-nine percent of gun owners have never received safety training in handling, storing, or transporting firearms.²⁹⁴ Furthermore, if most people’s first time shooting a gun is the day before or the day of the class required to receive a concealed carry permit,²⁹⁵ how can anyone argue that concealed carry permit holders are “skilled, proficient, and careful” in handling their weapon?

²⁸⁰ *Id.*

²⁸¹ *Id.*

²⁸² *Id.*

²⁸³ Platoff, *supra* note 276.

²⁸⁴ Melissa Chan, *Parents of School Shooters Rarely Are Held Responsible. This Case Is Different*, TIME (Dec. 8, 2021, 1:43 PM), <https://time.com/6126647/crumbley-parents-charges/>.

²⁸⁵ *Id.*

²⁸⁶ *Id.*

²⁸⁷ *Id.*

²⁸⁸ *Id.*

²⁸⁹ *Id.*

²⁹⁰ *Responsible Gun Ownership*, EVERYTOWN FOR GUN SAFETY, <https://everytownresearch.org/issue/responsible-gun-ownership/#what-is-the-problem> [<https://perma.cc/WX46-BGR7>].

²⁹¹ *S. Comm. on Rules*, *supra* note 49 (statement of Sen. Farmer).

²⁹² *Id.*

²⁹³ *Id.*

²⁹⁴ *Gun Owner Safety Training*, EVERYTOWN FOR GUN SAFETY, <https://everytownresearch.org/solution/safety-training/> [<https://perma.cc/S6Z8-QV7K>].

²⁹⁵ David Wulff & Joseph Binns, *What Every Civilian Needs to Know from Professional Law Enforcement Firearms Instructors*, in *GUNS 360: DIFFERING PERSPECTIVES AND COMMON-SENSE APPROACHES TO FIREARMS IN AMERICA* 133, 138 (Eric S. See et al. eds., 2022).

Over 4.6 million children in the United States live in homes with access to unsecured, loaded guns.²⁹⁶ The founder of Moms Demand Action argued that “[w]e wouldn’t have school shootings if children couldn’t access guns.”²⁹⁷ One suggestion to prevent unauthorized access to guns would be incentivizing gun safety technology, such as fingerprint trigger locks and biometric gun safes.²⁹⁸ Other solutions include requiring guns to be safely secured, safety training, and educating gun owners on the risks of having a firearm in their homes.²⁹⁹

Not only do the above suggestions seem like a significant step in the right direction to potentially saving innocent children’s lives, but they also have underlying support from the majority opinion in *Heller*, which stated that “[l]ike most rights, the right secured by the Second Amendment is not unlimited” and that “nothing in our opinion should be taken to cast doubt on longstanding . . . laws imposing conditions and qualifications on the commercial sale of arms.”³⁰⁰ Although it seems clear that protective gun laws that prevent children from easily accessing a firearm in their home would be permissible under *Heller*, it is “unlikely that sensible gun control legislation will be enacted” because of the extraordinary political influence that the NRA has on state and local governments.³⁰¹ Because the NRA is a strong self-defense supporter, it analyzes child access prevention laws using a cost-benefit analysis.³⁰² Thus, a gun control measure that made guns less accessible to children “would also make them less accessible to crime victims who needed to retrieve a gun quickly to defend themselves against a criminal in their home.”³⁰³ This argument makes sense; however, research suggests that only 1% of individuals can successfully defend themselves with a gun during crimes,³⁰⁴ significantly weakening their position. Politicians continually avoid the blunt truth of gun control, and thus we will continue to live in a society where our cell phones require a password to use, but a gun does not.³⁰⁵

While the purpose of Florida’s new relaxed gun law is to help stop a “bad guy with a gun,” the irony is that Florida would never have needed to pass such a law if it had stricter gun laws in the first place. More stringent gun laws would help prevent guns from getting into the hands of the wrong people and thus eliminate the “need” to arm more people to protect themselves.³⁰⁶ The cycle will never end if we continue enacting more lenient gun laws.³⁰⁷

²⁹⁶ *The Truth About School Shootings*, *supra* note 235.

²⁹⁷ Chan, *supra* note 284.

²⁹⁸ *The Truth About School Shootings*, *supra* note 235.

²⁹⁹ *Responsible Gun Ownership*, *supra* note 290.

³⁰⁰ *District of Columbia v. Heller*, 554 U.S. 570, 626–27 (2008).

³⁰¹ Terrades & Khan, *supra* note 3, at 524.

³⁰² Gary Kleck, *Mass Shootings in Schools: The Worst Possible Case for Gun Control*, 52 AM. BEHAV. SCIENTIST 1447, 1455 (2009).

³⁰³ *Id.*

³⁰⁴ *The Truth About School Shootings*, *supra* note 235.

³⁰⁵ Nicholas Kristof, *The Killer Who Supports Gun Control*, N.Y. TIMES (Dec. 14, 2013), <https://www.nytimes.com/2013/12/15/opinion/sunday/kristof-the-killer-who-supports-gun-control.html>.

³⁰⁶ Jessica Colarossi, *The FBI and CDC Datasets Agree: Who Has Guns—Not Which Guns—Linked to Murder Rates*, BOS. UNIV. FED. RELS. (Aug. 6, 2019), <https://www.bu.edu/federal/2019/08/06/the-fbi-and-cdc-datasets-agree-who-has-guns-not-which-guns-linked-to-murder-rates/>.

³⁰⁷ Joan E. Greve, *Why Can’t America Do Anything to Stop Mass Shootings?*, THE GUARDIAN (May 25, 2022, 1:36 PM), <https://www.theguardian.com/us-news/2022/may/25/why-cant-america-stop-mass-shootings-gun-control>.

Conclusion

Florida's decision to give religious institutions unrestricted discretion to allow concealed carry permit holders into their schools will have severe consequences. This law makes it easier for people who want to commit a mass shooting. A person can obtain their concealed carry permit within a few hours or, in the typical case of mass shooters, steal their family's weapons and walk into a religious institution without raising any flags. They will now have access to the children who attend these schools unlike ever before. Children, parents, and religious institutions will continue to face the fear that they will be in harm's way by mass shooters because the law's purpose was not to provide protection. Instead, it seeks to expand Second Amendment rights for those who believe private property rights are superior to the safety of children and congregants. None of the rationales provided by the Florida Legislature consider the safety or interests of children. Therefore, this law should be repealed.