

GERMAN AND TEXAN APPROACH TO GUN CONTROL

*Owen Gonzalez**

INTRODUCTION

On August 3, 2019, at 2:09pm, twenty-one-year-old Patrick Wood Crusius entered an El Paso Wal-Mart with a shotgun.¹ Twenty-two lives ceased by the end of the attack, and twenty-four more people received injuries.² While the exact details concerning the purchase of the firearm are unknown, law enforcement officials verified that the weapon was purchased legally.³ Unfortunately, such an event is not rare as less than two years earlier Texas had witnessed its deadliest mass shooting when Devin Patrick Kelley murdered twenty-six people with a Ruger AR-556 semi-automatic rifle inside of a First Baptist Church in Sutherland Springs.⁴

The United States is far from being the only developed country that experiences gun violence, but the increase rate of mass shootings throughout the country has become severely alarming.⁵ For instance, between September of 2017 and August of 2019, Texas experienced five mass shootings, resulting in the death of seventy-five citizens.⁶ The motivation behind these massacres ranged from domestic violence abuse to religious and anti-immigration hate

* Staff Editor, Nuremberg Project, Rutgers Journal of Law and Religion: J.D. Candidate May 2021, Rutgers Law School.

¹ David K.Li, *El Paso Shooting Being Treated as Domestic Terrorism*, NBCNEWS (Aug. 4, 2019, 5:03 PM UTC), <http://www.nbcnews.com/news/us-news/el-paso-shooting-being-treated-domestic-terrorism-police-say-suspect-n1039076>.

² Bill Hutchinson et. al., *Alleged Shooter Cased El Paso Walmart Before Rampage That Killed 22: Law Enforcement Officials*, ABCNEWS (Aug. 5, 2019, 7:20 PM), <https://abcnews.go.com/US/death-toll-rises-22-el-paso-shooting-victims/story?id=64780680>.

³ Claire Cardona, *What we Know About the El Paso Massacre Suspect and his ties to North Texas*, DALLASNEWS (Aug. 5, 2019, 10:51 PM), <http://www.dallasnews.com/news/crime/2019/08/05/what-we-know-about-the-el-paso-massacre-suspect-and-his-ties-to-north-texas/>.

⁴ Saeed Ahmed, *2 of the 5 Deadliest Mass Shootings in Modern US History Happened in the Last 35 Days*, CNN (Nov. 6, 2017, 9:44 AM), <http://www.cnn.com/2017/11/05/health/deadliest-mass-shooting-in-modern-us-history-trnd/index.html>.

⁵ Jason Silverstein, *There Have Been More Mass Shootings Than Days This Year*, CBSNEWS (Sept. 1, 2019, 4:13 PM), <https://www.cbsnews.com/news/mass-shootings-2019-more-mass-shootings-than-days-so-far-this-year/>.

⁶ *5 Mass Shootings in Texas Over the Past 2 years*, ABC13 (Sept. 2, 2019), <https://abc13.com/5-mass-shootings-in-texas-over-the-past-2-years/5509542/>.

crimes.⁷ The constant reoccurrence of these horrendous crimes serves to prove that gun violence is a critical issue in Texas. The significance of this problem is evident when compared to the occurrence and reaction to mass shootings around the world. Germany, for example, has continuously introduced new legislation to prevent the probability of future shootings.⁸

To what should we attribute the shocking difference between the rate of gun violence in Texas and Germany? An examination of the relevant gun possession laws and the limitation that they impose on their citizens could provide insight. This note will seek to analyze and determine whether Texas should follow in Germany's footsteps. Specifically, it will address two key provisions that Germany has implemented to lower the risk of young adults misusing fire weapons. It will ignore core beliefs in support for or against gun control, and instead, focus on the legality of the issue. Mainly, whether the Texas State Constitution would allow the incorporation of German gun possession laws.

Thus, Part 1 begins by detailing the statistical information regarding gun possession in both Germany and Texas and further provides background on the levels of crime associated with fire weapons. Secondly, it analyzes the well-known mass shootings that occurred in Germany within the last twenty years. Part 2 will then address the legislative responses to those shootings and question whether the most effective German gun possession laws concerning young adults would be constitutionally acceptable under the Texas State Constitution.

Ultimately, it is unlikely that Texas will ever implement the caliber of gun possession laws that currently exist in Germany. The Texas State Constitution serves to protect its citizens from the grand authoritative power that German laws require. The two most prevailing German gun possession laws targeting young adults concern a required psychiatric evaluation for marksmen under the age of twenty-five and law enforcements' authority to enter a dwelling unannounced to perform gun storage inspections.⁹ An

⁷ Ed Lavandera & Jason Hanna, *El Paso Suspect Told Police He Was Targeting Mexicans, Affidavit Says*, CNN (Aug. 9, 2019, 5:15 PM), <https://www.cnn.com/2019/08/09/us/el-paso-shooting-friday/index.html>.

⁸ Annalisa Merelli, *Dear America, Here's How Other Countries Stop Mass Shootings*, QUARTZ (Feb. 22, 2018), <https://qz.com/1212809/compare-us-mass-shootings-and-gun-control-to-germany-china-russia-switzerland-and-australia/>.

⁹ Waffengesetz [WaffG] [Weapons Act], Oct. 11, 2002, BGBl. I at 3970, § 6 and § 36 (Ger.).

attempt by Texas to implement similar gun possession laws would eventually be deemed unconstitutional on privacy grounds.

PART 1

a. Texas Statistics

To fully comprehend the current gun violence epidemic in the state of Texas, it is essential to dive into the statistics. Since 2014, and as of December 23, 2019, there have been seven thousand one hundred thirty-two deaths as a result of gun violence.¹⁰ Further, during this period, nine thousand thirty-nine people were injured in disputes involving firearms, and one hundred and thirty-two mass shootings occurred in Texas alone.¹¹ A 2017 study showed that the number of guns per capita in Texas was 20.79, and Texas ranked No.1 in total guns registered with 588,696.¹² To put that figure into perspective, Florida ranked No. 2 with 343,288 guns registered, 245,408 less than Texas.¹³

To understand this surplus of guns, consider the fact that Texas “shall issue” state contrary to a “may issue” state.¹⁴ Consequently, upon completion of the relatively quick national background check, Texans are immediately allowed to purchase as many guns as they wish during a single purchase.¹⁵ Further, an owner seeking a renewal of their license may simply apply online and pay a minimal fee.¹⁶ Leniently granting a renewal ignores changes in an individual’s habits and mental psyche, thus disregards the general public’s safety. Overall, obtaining a firearm in Texas is relatively simple.

¹⁰ *Gun Violence Archive 2014-2019 TX Stats*, GUNVIOLENCEARCHIVE.ORG, <https://www.gunviolencearchive.org/congress/tx> (last visited Oct. 20, 2019).

¹¹ *Id.*

¹² Deborah White, *What is Gun Ownership Like State by State*, THOUGHTCO. (Mar. 4, 2019), <https://www.thoughtco.com/gun-owners-percentage-of-state-populations-3325153>.

¹³ *Id.*

¹⁴ *Concealed Weapons Permitting in Texas*, GIFFORDS L. CTR., <https://lawcenter.giffords.org/concealed-weapons-permitting-in-texas/> (last visited Sept. 14, 2018).

¹⁵ David Tarrant & Maria Mendez, *What are the Gun Laws in Texas, and What’s Changing Sept. 1*, DALL. MORNING NEWS (Aug. 9, 2019, 2:00 PM), <https://www.dallasnews.com/news/2019/08/09/what-are-the-gun-laws-in-texas-and-what-s-changing-sept-1/>.

¹⁶ Madlin Mekelburg, *Texas Gov. Greg Abbott Signs Bill Cutting Cost of Gun Licenses, Jokes About Shooting Reporters*, DALL. MORNING NEWS (May 26, 2017, 5:15 PM), <https://www.dallasnews.com/news/politics/2017/05/26/texas-gov-greg-abbott-signs-bill-cutting-cost-of-gun-licenses-jokes-about-shooting-reporters/>.

b. Evolution of the Weapons Act of 1972 (Germany)

First and foremost, it is imperative to recognize that unlike Americans, German citizens do not have a fundamental right to bear arms.¹⁷ The German legislature introduced the Weapons Act of 1972 as the first federal act preventing crime through the restrictions of firearms.¹⁸ The Act was revised several times, most notably in 2002 and 2009, as a direct response to two school shootings.¹⁹ Mainly, the Act restricts the categories of weapons that can be purchased by the general population as well as placing restrictions on specialized shooters.²⁰ For instance, a marksman under the age of twenty-five must adhere to a psychiatric evaluation before being granted a weapons-possession license.²¹

The stringent requirements in obtaining a license limit the number of guns purchased in several ways. First, prospective gun purchasers must meet the rigorous requirement of eligibility, and second must be willing to present all the personal information that is required.²² The results are evident as only a little more than 1% of the population are licensed gun owners, while in the United States it is about that 30% of the population owns guns.²³

c. Erfurt School Massacre

Germany has regularly maintained strict gun possession laws throughout much of its history.²⁴ However, it took a much stronger conservative approach as a result of the Erfurt massacre, which occurred on April 26, 2002.²⁵ On that day, nineteen-year-old Robert Steinhauser entered his former secondary school with a 9mm Glock 17 and five-hundred rounds of ammunition.²⁶ He began

¹⁷ Edith Palmer, *Firearms-Control Legislation and Policy: Germany*, L. LIBR. OF CONG. (2015), <https://www.loc.gov/law/help/firearms-control/germany.php#Current>.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² Palmer, *supra* note 17.

²³ Faith Jessie, *Comparing Gun Control: How do You get a Firearm in Germany?*, 3NBCNEWS (Dec. 20, 2018), <https://news3lv.com/news/nation-world/comparing-gun-control-how-do-you-get-a-firearm-in-germany>.

²⁴ Palmer, *supra* note 17.

²⁵ Zachary Hofeld, *Study Abroad: Foreign Legislative Responses to Mass Shootings and Their Viability in the United States.*, 28 MINN. J. INT'L L. 485, (501) (2019).

²⁶ John Hooper, *Killer's Secret Behind Revenge Attack*, THE GUARDIAN (Apr. 29, 2002, 6:10 PM), <https://www.theguardian.com/world/2002/apr/29/schools.education>.

shooting at approximately 11:00am and within thirty minutes, killed staff members, two students, and a police officer.²⁷ Germany responded to this attack by enacting a new Weapons Act, which attempted to limit young adults' access to firearms.²⁸

d. 2009 Winnenden Shooting

Germany experienced another horrific school shooting in the Spring of 2009 when 18-year old Tim Kretschmer entered a secondary school in Winnenden and began firing a Beretta 92FS INOX into several classrooms.²⁹ The Beretta 92 is a classified semi-automatic pistol and is an integral part of the American military arsenal.³⁰ Although the police officers arrived at the school immediately after receiving an emergency call, the response was inadequate to prevent Kretschmer from murdering nine students and three female teachers.³¹ Upon evading police at the school, Kretschmer proceeded to kill an employee at a nearby psychiatric clinic.³² He then traveled to a Volkswagen dealership where he shot and killed an employee, a customer, and ultimately himself in the dealership parking lot.³³

The subsequent investigation uncovered two critical factors about the crime. First, Tim Kretschmer was a social outcast, who along with being obsessed with firing guns, had been undergoing psychiatric counseling in the months leading up to the massacre.³⁴ Second, upon an investigation of the Kretschmer home, police found that his father was a recreation gun-owner who possessed a

²⁷ *Id.*

²⁸ *See*, Hofeld, *supra* note 25, at 501.

²⁹ Carter Dougherty, *Teenage Gunman Kills 15 at School in Germany*, N.Y. TIMES (Mar. 11, 2009), <https://www.nytimes.com/2009/03/12/world/europe/12germany.html>.

³⁰ As stated by the Beretta official website, the 92FS maintains superior reliability. It delivers exceptional accuracy and reliability, in particular the open-slide design practically eliminates “stove piping” and helps flawless cycling and feeding even after thousands and thousands of rounds. *See 92FS Inox*, BERETTA, <http://www.beretta.com/en-us/92-fs-inox/>.

³¹ Carter Dougherty, *Teenage Gunman Kills 15 at School in Germany*, N.Y. TIMES (Mar. 11, 2009), <https://www.nytimes.com/2009/03/12/world/europe/12germany.html>.

³² *Id.*

³³ *Id.*

³⁴ Hofeld, *supra* note 25, at 501.

sophisticated arsenal.³⁵ Critically, police determined that a pistol and more than one-hundred rounds of ammunition were missing from the elder Kretschmer's collection.³⁶

The combination of Kretschmer's mental state and his immediate access to a firearm served as critical components facilitating the massacre. Further, his expertise as a shooter allowed him to nullify the law enforcement's quick response. Tim would have likely had a difficult time gaining access to a firearm of the caliber used in the shooting, had it not been for his father's inability to correctly manage his arsenal. While it may be idealistic to believe that the shooting was completely avoidable, it is evident that an absence of any of the three critical factors would have prevented the massacre from reaching the levels it did.

The German legislature accepted this reality and quickly worked to present legislation that would prevent the reoccurrence of a similar event. They began by requiring mental evaluations of all young marksmen attempting to purchase a firearm and also implemented strict duties on gun owners regarding the storage of their weapons.³⁷

PART 2

Germany's Legislative Response

a. Safe Storage of Firearms

As a direct response to the way Tim Kretschmer obtained the firearm he used in the Winnenden Shooting, the German legislature introduced new regulations regarding the storage of weapons inside of an owner's dwelling.³⁸ Licensed gun owners are now responsible for keeping their weapons under lock, and the quality of security

³⁵ *Germany Remembers Winnenden School Shooting, Lawsuit Pending*, DW (Mar. 11, 2016), <https://www.dw.com/en/germany-remembers-winnenden-school-shooting-lawsuit-pending/a-19111382>.

³⁶ *Teenage Gunman Takes Own Life After German School Shooting*, DW (Nov. 3, 2009), <https://www.dw.com/en/teenage-gunman-takes-own-life-after-german-school-shooting/a-4088804>.

³⁷ Audrey Carlsen & Sahil Chinony, *How to Buy a Gun in 16 Countries*, N.Y. TIMES (Aug. 6, 2019), <https://www.nytimes.com/interactive/2018/03/02/world/international-gun-laws.html> ("Germans who keep firearms in their homes agree to let the police conduct unannounced home inspections to check that they are kept safely. The United States has no requirement for how firearms must be stored.")

³⁸ Palmer, *supra* note 17.

varies according to the potency of the weapon.³⁹ Further, gun owners must allow authorities to randomly enter their dwellings to monitor compliance with safe-storage regulations.⁴⁰ Interestingly, an inspection cannot be refused and is allowed to proceed without a search warrant.⁴¹ This increase in governmental authority is limited in scope, as officers may only inspect for compliance with storage regulations and may not conduct other forms of criminal investigations.⁴² Providing a good reason for refusal may prevent the authorities from legally entering an owner's dwelling; however, repetitive use of this method could result in the revocation of the owner's gun license.⁴³ Implementing this severe form of legislation depicted the devastating impact that the shooting had on Germany and how far the legislature was willing to extend police power to avoid another disaster.

b. Psychiatric Evaluation of Marksmen under the Age of 25

The Erfurt School Massacre prompted the German legislature to enact an amendment that directly attacked the application process of possessing and carrying a firearm.⁴⁴ Section 6 of the Weapons Act entitled "Personal Aptitude" sets forth the standard by which an individual must follow to acquire a firearm.⁴⁵ Section 6 (3) directly applies to marksmen requiring those under the age of twenty-five to undergo a psychiatric evaluation before applying for their first weapons-possession license.⁴⁶ The term *marksmen* typically refer to "a person skilled in shooting at a mark or target."⁴⁷ The requirement ensures that skilled shooters such as the perpetrators of the previously mentioned shootings are considered mentally capable of owning a firearm. Implementing the regulation provided the general public with a sense of security as marksmen present a unique sense of danger because of their superior shooting abilities. Any misuse or abuse of a weapon by a young marksman could result in a catastrophic disaster.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² *Id.*

⁴³ Palmer, *supra* note 17.

⁴⁴ *Id.*

⁴⁵ Waffengesetz [WaffG] [Weapons Act], Oct. 11, 2002, BGBl. I at 3970, § 6 (Ger.).

⁴⁶ *See id.* § 6 (3).

⁴⁷ MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/marksmen>.

Can German Provision Survive Texas Constitutional
Muster?

a. Article. 1, §23

Our analysis begins by addressing the Texas constitutional provision that grants Texans the right to possess and carry firearms. Section 23 of Article 1 of the Texas Constitution states, “Every Citizen shall have the right to keep and bear arms in the lawful defense of himself or the State; but the legislature shall have power, by law, to regulate the wearing of arms, with a view to prevent crime.”⁴⁸ Contrary to the Second Amendment of the United States Constitution, the Texas State Constitution grants the right to keep and bear arms directly to the individual.⁴⁹ However, the legislature has the authority to implement restriction to the carrying of firearms, if it serves to prevent crime.⁵⁰

The Texas state legislature has scantily used its power to restrict the wearing of arms on individuals who it believes possess a threat to society. For example, §46.04 of the Texas Penal Code prohibits a convicted felon from possessing a firearm before the fifth anniversary of the individual’s release from confinement or mandatory supervision.⁵¹ The constitutionality of the §46.04 has been questioned on the basis that it infringes upon their state’s right to bear arms, but these arguments have ultimately failed, as demonstrated below.

The first challenge to the law occurred in *Lucas v. State*, where the court upheld §46.04, reasoning that it protected the general public from violent offenders.⁵² Further, there was a rational basis for restricting the possession of firearms “because violent offenders have demonstrated a propensity toward violence.”⁵³ Thus, §46.04 operates to prevent crime as it diminishes the possibility that felons will reperform unlawful acts.

Courts have stressed that §46.04 requires proof of the very factor that is central to the purpose of the statute: keeping violent felonies from occurring with firearms.⁵⁴ Additionally, the court in *Shepperd v. State* asserted that proof of an inescapable relationship

⁴⁸ TEX. CONST. art. 1, § 23.

⁴⁹ *Masters v. Texas*, 653 S.W.2d 944, 946 (Tex. Crim. App. 1983).

⁵⁰ TEX. CONST. art. 1, § 23.

⁵¹ TEX. PENAL CODE § 46.04 (Effective until Jan. 1, 2021)

⁵² *Lucas v. Texas*, 791 S.W.2d 35, 64 (Tex. Crim. App. 1989).

⁵³ *Id.*

⁵⁴ *Shepperd v. Texas*, 586 S.W.2d 500, 503 (Tex. Crim. App. 1979).

between past and future conduct is not required to justify the statute because it is reasonable to conclude that a person who has committed a felony is an undesirable person to possess firearms.⁵⁵ Therefore, when asked to rule on disputes concerning the carrying of a weapon, Texas courts consider: whether the statute operates to prevent crime and whether there is evidence of prior behavior that justifies infringing on an individual's rights.

Section 46.04 also proves that the legislature can use its authority to control the wearing of arms to prevent crime in various sectors of the public. However, as cases justifying §46.04 demonstrate, regulations must be specific, and not overly broad, to directly prevent crime. Further, evidence of prior behavior will strengthen the assertion that there is a need to regulate an individual's state rights.⁵⁶ Accordingly, if a law does not directly prevent crime, it will be found to be unlawful regardless of the need to restrict a category of individuals from obtaining firearms. Therefore, if the Texas state legislature were to make restrictive gun laws to the caliber that exists in Germany, it would do so under its particularized authority to prevent crime. The previously mentioned German gun possession laws will be analyzed under this power below.

b. Psychiatric Evaluation of Marksmen under the Age of 25

Could a statute deeming it unlawful for a marksman under the age of twenty-five to carry a firearm without having adhered to a psychiatric evaluation be effective in Texas? With a substantive number of Texas teens joining gun clubs and the age of the perpetrators in the many of the recent mass shootings being between the age of seventeen to twenty-six, it is in the best interest of Texas to know whether a marksman is mentally capable of carrying a weapon.⁵⁷ Implementing this additional requirement could be a better alternative than simply relying on the national background check. That check only prevents the purchase of a

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *E.g.*, Hendrik Sackmann & Nciola Leske, *Teenage Gunman Kills 15 in German School Attack*, REUTERS (Mar. 11, 2009), <https://www.reuters.com/article/us-germany-school-deaths/teenage-gunman-kills-15-in-german-school-attack-idUSTRE52A27H20090311> (discussing the Winnenden School Shooting of 2009).

firearm after a court finds an applicant mentally inadequate.⁵⁸ Therefore, requiring a psychiatric evaluation prior to purchasing a firearm could operate as a proactive method to protect society from significant danger.

However, requiring marksmen under the age of twenty-five to undergo a psychiatric evaluation before obtaining a license to carry would likely be challenged on privacy grounds. The highest court of the state has held that the Texas State Constitution protects personal privacy from unreasonable intrusion.⁵⁹ The court has regularly stated that the right to privacy should only be bypassed when “the government can demonstrate that an intrusion is reasonably warranted for the achievement of a compelling governmental objective that can be achieved by no less intrusive terms.”⁶⁰ To illustrate, *Tex. State Emps. Union* addressed whether a required polygraph examination violated the employees’ right to privacy.⁶¹

In that case, the Texas State Employee Union sued the Texas Department of Mental Health and its administration, seeking to invalidate a mandatory polygraph policy.⁶² Under the policy, employees would be subject to termination if they refused to submit to the examination.⁶³ The examination consisted of control questions, which are not job-related and require the disclosure of matters personal to the employee.⁶⁴ To consider the validity of the policy, the court sought to determine whether the interests put forth by the Department were compelling enough to be deemed reasonable and override the privacy interest of the employees.⁶⁵ The court noted that the Department’s interests would be more compelling if they related to the vital functions of the state, such as the promotion of the general public’s safety.⁶⁶ However, the court found the Department’s main interest in requiring the examination was to maintain a safe environment for its patients, despite its

⁵⁸ *Universal Background Check*, GIFFORDS L. CTR., <https://lawcenter.giffords.org/concealed-weapons-permitting-in-texas/>.

⁵⁹ *Marble Falls Indep. Sch. Dist. v. Shell*, Nos. 03-02-00652-CV, 03-02-00693-CV, 2003 Tex. App. LEXIS 2845, at *15 (Tex. App. Apr. 3, 2003).

⁶⁰ *Id.*

⁶¹ *Texas State Emps. Union v. Texas Dep’t of Mental Health & Mental Retardation*, 746 S.W.2d 203, 204 (Tex. 1987).

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Texas State Emps. Union*, 746 S.W.2d at 204.

⁶⁵ *Id.* at 205.

⁶⁶ *Id.*

assertion of general welfare.⁶⁷ Ultimately, the court held that the Department's interest fails to infringe on the employees' right of privacy.⁶⁸

Moreover, it may be inferred that the *Texas State Emps. Union* balancing test would likely be applied in a privacy dispute requiring a psychiatric evaluation for young marksmen seeking a carrying license. Critically, the dispute would consider whether the interest in safeguarding the general public is compelling enough to infringe upon a marksman's privacy rights. Unlike the facts in *Texas State Emps. Union*, this evaluation would directly protect society from the dangers associated with mentally ill marksmen. However, the state should only intrude upon the privacy of a citizen if another alternative is not available. Evidently, the state could take on other measure to prevent marksmen from abusing a firearm, such as limiting the caliber of guns and amount of ammunition sold to them. Therefore, an evaluation would be unreasonable as it infringes upon a marksman's personal affairs and the state has other alternatives available.

Further, the state would not likely be able to justify the mandatory evaluation using the same grounds as §46.04. Marksmen with no prior history of misconduct would argue that a mandatory psychiatric evaluation would be improper under Article 1, §23 without a justified compelling interest to protect the general public.⁶⁹ Conducting mandatory evaluations without proof of prior misconduct would run contrary to the holding in *Shepperd* and incorrectly classify marksmen. Unlike *Shepperd*, the typical marksman tends to not have a record of "fault" or a record of violence that would requires additional restrictions on their right to wear arms.⁷⁰ Also, requiring an evaluation would not directly prevent crime. Unlike §46.04, which strictly prohibits felons from obtaining a firearm, an evaluation would operate as an additional element in the application process. Without having a direct effect on the prevention of crime, then, the law would not be upheld.

c. *Monitoring of firearm storage*

A statute enabling the constant, unannounced, and random monitoring of firearms storage would ignite much controversy and

⁶⁷ *Id.* at 206.

⁶⁸ *Id.*

⁶⁹ *Lucas*, 791 S.W.2d at 64.

⁷⁰ *Shepperd*, 586 S.W.2d at 503.

reluctance among Texans, but could it be deemed constitutional? Section 9 of Article 1 of the Texas Constitution reads:

The people shall be secure in their person, houses, papers and possession from all unreasonable seizures and searches, and no warrant to search any place, or to seize any person or thing, shall issue without describing them as near as may be, nor without probable cause supported by oath or affirmation.⁷¹

This section does not require that a seizure or search be authorized by a warrant.⁷² Furthermore, a warrantless seizure or search is not in violation of the Texas State Constitution if it is determined to be reasonable.⁷³

Texas also allows for some authoritative intervention to a citizen's dwelling without a warrant through the emergency doctrine; nevertheless, this resource is applicable under narrow circumstances.⁷⁴ Specifically, it demands that a warrantless search be supported by an imminent danger to an individual or society at large.⁷⁵ The Texas Court of Criminal Appeals has established three categories of exigent circumstances that justify a warrantless intrusion by police officers.⁷⁶ These circumstances include when officers are (1) providing aid to persons who they believe are in need of assistance, (2) protecting themselves or the general public from imminent danger, and/or (3) preventing the destruction of evidence.⁷⁷

An officer entering upon a gun owner's home to inspect observance to storage regulations would likely not fall under any of the three categories established by the Texas Court of Criminal Appeals.⁷⁸ Without an imminent threat of danger, it is unlikely that a search would be deemed reasonable. The idea that an officer could enter upon the dwelling of a gun-owner at any time, and without a compelling reason, runs counter to the Texas State Constitution.⁷⁹ Hence, the power granted to German police officers would likely be

⁷¹ TEX. CONST. art. 1, § 9.

⁷² *Id.*

⁷³ *Hulit v. Texas*, 982 S.W.2d 431, 436 (Tex. App. 1998).

⁷⁴ TEX. CODE CRIM. PROC. ANN. art. 14.50 (West 1966).

⁷⁵ *Gutierrez v. Texas*, 221 S.W.3d 680, 686 (Tex. Crim. App. 2007).

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ TEX. CONST. art. 1, § 9.

deemed unconstitutional in the state of Texas as it infringes on the protection granted by Article 1, §9 of the state constitution.⁸⁰

CONCLUSION

The state of Texas has seen its fair share of tragedy due to gun violence. Far too often, young Texans have been at the heart of mass shootings due to relaxed gun laws. The results of those horrific events have fallen on deaf ears in Texas as the number of guns per capita continues to increase. On the contrary, Germany has learned from its past experiences and adopted legislation, which has served to substantively lower the number of mass shooting throughout the country. Unfortunately, the measures taken by Germany through the amending of the Weapons Act cannot be reciprocated in Texas. The Texas State Constitution allows the legislature to restrict the wearing of guns in very limited circumstances. While provisions of the magnitude found in Germany may be out of the question, it is evident that Texas must modify the wearing of arms for the sake of its citizens. The legislature should begin by adapting regulations that focus on limiting the number of purchasable firearms and ammunition. Until then, Texans will continue to sacrifice their safety for their guns.

⁸⁰ *Id.*