

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

| | | |
|----------------------------|---|---------------|
| RUDOLPH DIGIACINTO, |) | |
| |) | |
| <i>Plaintiff,</i> |) | |
| |) | |
| v. |) | CL-2008-14054 |
| |) | |
| THE RECTOR AND VISITORS OF |) | |
| GEORGE MASON UNIVERSITY, |) | |
| |) | |
| <i>Defendant.</i> |) | |

FINAL ORDER

On the 22nd day of July, 2009, came the parties for trial on Plaintiff Rudolph DiGiacinto's Bill of Complaint for Declaratory Judgment and Injunctive relief under Virginia Code § 8.01-184 and §8.01-620 to enjoin the Defendant, The Rector and Visitors of George Mason University ("University") and its agents from enforcing regulation 8VAC35-60-20 ("regulation") against Mr. DiGiacinto. Plaintiff challenged the regulation on the following three grounds:

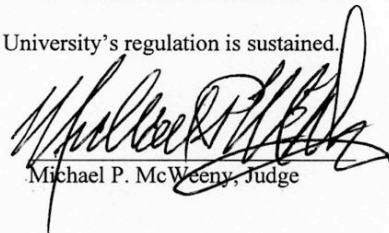
- 1) The regulation is unconstitutional under both Art. I, § 13 of the Virginia Constitution and the Second Amendment to the United States Constitution (Count I).
- 2) The University has no delegated authority to regulate handguns on its campus (Count II).
- 3) The University has no delegated authority to make or maintain regulations inconsistent with state law (Count III).

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WHEREUPON, the Court heard the argument of the Plaintiff *pro se* and Defendant by counsel, there being no issues of fact at bar, and did render an *ore tenus* verdict on the 31st day of July, 2009; it is thereby held:

- 1) That the subject regulation implicates the right to openly keep and bear arms under the Constitutions of the United States and the Commonwealth of Virginia; and
- 2) That the subject regulation, being narrowly tailored to fulfill a compelling state interest, is constitutional under both Virginia and the United States; and
- 3) That the scope of regulatory authority exercised by the University is not subject to a Declaratory Judgment action as a result of the sovereign immunity of the Commonwealth; and, alternatively,
- 4) That were the University subject to a Declaratory Judgment action, the University has the requisite delegated authority to adopt the regulation pursuant to Virginia Code §23-91.29.

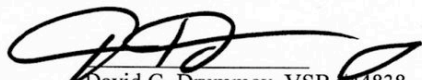
UPON CONSIDERATION WHEREOF, it is ORDERED that the Plaintiff's Bill of Complaint be dismissed with prejudice and the University's regulation is sustained.



Michael P. McWeeny, Judge

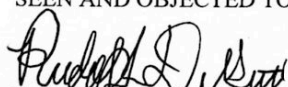
Entered this 14th day of August, 2009

SEEN AND AGREED:



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Assistant Attorney General
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(703) 993-2619
Telefax (703) 993-2340


SEEN AND OBJECTED TO, WITH EXCEPTIONS NOTED:


Rudolph DiGiacinto, *pro se*

Plaintiff's Exceptions/Objections to the Opinion and Final Order

1) The holding that GMU's regulation is constitutional is contrary to Va. Const. Art. I, § 13 and U.S. Const. Amend. II. *Obiter dicta* cannot be cited as authority. *Cooper v. Commonwealth*, __ Va. App. __, __ S.E.2d __ (Aug. 11, 2009). The case of *Nordyke v. King*, 563 F. 3rd 439, 459 (9th Cir. 2009) upon which GMU relied and the court recited has been vacated. The Regulation in question is not longstanding and the history of colleges in Virginia shows that students are to be armed and trained to arms. GMU cannot be held to be a sensitive place, for where safety and security is needed, you will find a well regulated militia composed of the body of the people, not armed felons. *Fairfax County Militia Plan for Embodying the People*, in 1 *The Papers of George Mason*, 215-216 (Robert A. Rutland ed. 1970). The regulation is not narrowly tailored and is effectually a total ban by not allowing access to buildings or events that are open to the public. Va. Const. Art. I, § 13 is the less restrictive and required means of obtaining safety.

2) That Va. Const. Art. I, § 14 is a self-executing constitutional provision. This allows the inquiry into GMU's authority under *Kemper v. Hawkins*, 3 Va. (1 Va. Cases) 20, 40-41(1793). GMU cannot be independent of the Commonwealth and must conform to the General Laws and be at all times under the control of the General Assembly. *University of Utah v. Shurtleff*, 144 P.3d 1109, 1121 (Utah 2006). The General Assembly cannot acquiesce its constitutional powers away under Va. Const. Art. IV, § 1; Va. Const. Art. I, §§ 6 & 7. *Avalon Assisted Living Facilities, Inc. v. Zager*, 39 Va. App. 484, 508, 574 S.E.2d 298, 309-310 (2002). The General Assembly cannot acquiesce to an unconstitutional act under *Ellinger v. Commonwealth*, 102 Va. 100, 105-106, 45 S.E. 807, 808 (1903).


Rudolph DiGiacinto, *pro se*