

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF FAIRFAX

RUDOLPH DIGIACINTO

Plaintiff,

v.

**THE RECTOR AND VISITORS OF GEORGE
MASON UNIVERSITY**

SERVE: Dr. Alan G. Merten
Office of the President
4400 University Dr. MSN 3A1
Fairfax, Va. 22030

SERVE: Mr. William Soza
Secretary, Board of Visitors
4400 University Dr. MSN 3A1
Fairfax, Va. 22030

Defendant.

Case No. 2008 14054

BILL OF COMPLAINT

Introduction

1) This is an action for declaratory judgment and injunctive relief to enjoin the Defendant and its agents from enforcing 8VAC35-60-20 against the Plaintiff.

Parties

2) The Plaintiff Mr. Rudolph DiGiacinto is a resident of Fairfax County, Virginia. Mr. DiGiacinto is the founder of Virginia1774.org which is the legal research website on the origin of the Virginia Constitution, Article I, §13. Many of the documents on the website came from George Mason University. Mr. DiGiacinto visits and utilizes the resources of George Mason University including but not limited to the academic libraries to facilitate continual research and documentation for the website Virginia1774.org and court cases. The *Amicus Curiae* brief of Virginia1774.org in *District of Columbia v. Heller*, 544 U.S. ___ (2008) contained information obtained from George Mason University. Mr. DiGiacinto attended the first national symposium on “Firearms law and the Second Amendment” held at George Mason University’s Arlington Campus in 2005. Mr. DiGiacinto is not a student at George Mason University. Mr. DiGiacinto on a daily basis exercises his constitutional right to keep and bear arms by the unconcealed carrying of his handgun in places open to the public. Mr. DiGiacinto has obtained the statutory granted privilege to carry a concealed handgun under Virginia code §18.2-308(D). Mr. DiGiacinto also at times carries in his handgun a magazine made for the firearm that holds more than 20 rounds of ammunition as defined under Virginia Code §18.2-287.4.

3) Defendant is The Rector and Visitors of George Mason University which is an educational institution that owns, controls, and maintains “George Mason University” pursuant to §23-91.24 *et seq.* The Defendant (GMU) maintains campuses, buildings and facilities in Fairfax, Arlington, Prince William and Loudoun Counties in Virginia.

Jurisdiction

4) Virginia Code § 8.01-184 grants this court the power to issue declaratory judgments. Virginia Code § 8.01-620 grants this court jurisdiction to award injunctions.

Venue

5) Defendant has its principle office at 4400 University Dr. Fairfax, Va. 22030. Venue therefore is proper in Fairfax County under § 8.01-261.

Facts

6) The Defendant is exempted from the Administrative Process Act under § 2.2-4002(6).

7) The Defendant promulgated regulation 8VAC35-60-20 in 2007. This regulation states: “Possession or carrying of any weapon by any person, except a police officer, is prohibited on university property in academic buildings, administrative office buildings, student residence buildings, and while attending sporting, entertainment or educational events. Entry upon the aforementioned university property in violation of this prohibition is expressly forbidden.”

8) The Attorney General issued an official opinion in 2002 stating that the General Assembly had preempted the field of the carry of concealed firearms and that only the General Assembly may state what places are off limits to the carriage of concealed weapons by valid permit holders. Op. Va. Att’y Gen., 36-37 (2002). Footnote 39 of that opinion stated, “The analysis of the prior opinion depended whether a regulation may be considered a “law” for the purposes of exceptions to §18.2-308. The answer to that question is correct... This opinion, however, questions whether the Department of Conservation and Recreation has the authority to issue the regulation... This opinion concludes that the General Assembly did not grant the Department the authority to issue a regulation prohibiting the carrying of a concealed weapon by a valid permit holder.” Va. Code 18.2-308 (O) states, “The granting of a concealed handgun

permit shall not thereby authorize the possession of any handgun or other weapon on property or in places where such possession is otherwise prohibited by law or is prohibited by the owner of private property.” In September of this year the Attorney General issued another opinion on the open carry of firearms and in reaffirming the previous 2002 opinion on the preemption of firearm laws stated, “I find no specific statutory authority granting the Department the authority to prohibit the open carrying of firearms in state parks. A person’s right to carry a firearm openly is considered universal within the Commonwealth, subject to definite and limited restrictions upon certain locations and classifications of individuals.” Op. Va. Att’y Gen., (Sept. 2008).

9) The George Mason University police under 8VAC35-60-30 “are lawfully in charge for the purposes of forbidding entry upon or remaining upon university property while possessing or carrying weapons in violation of this prohibition.”

10) Mr. DiGiacinto sent a detailed five page letter to the Chief of Police, Mr. Michael Lynch, on September 21, 2008 by First Class mail and by e-mail concerning the legality of the regulation and if the regulation would be enforced against Mr. DiGiacinto.

11) The Chief of Police responded to Mr. DiGiacinto by e-mail with a “cc” to attorney Thomas Moncure on September 26, 2008 with the following message: “Thank you for your comments on our regulations at George Mason University. The University Police Department is a full service, nationally accredited police department and is empowered to enforce the laws of the commonwealth and certain regulations of the university (including the regulation you cite). We are proud of the services we provide to the university community.”

12) The United States District Court for the Western District of Virginia in *United States v. Gettier*, Slip Copy, WL 822073 (W.D. Va. 2008) recently reaffirmed *United States v. Lofton*, 233 F.3d 313, 316 (4th Cir 2000), which stated, “The publication in the Code of Federal

Regulations of the general ban against the carrying of weapons in national parks provided sufficient notice to [the defendant] of the criminality of his conduct.” The publication of GMU’s regulation in The Virginia Register of Regulations, Vol.24 ISS.1 24-25 (2007) and the response by the Chief of Police has placed Mr. DiGiacinto on notice that if he asserts his constitutional and statutory rights he is guilty of Trespass under §18.2-119. The Defendant has invaded the most valuable rights of the Plaintiff without any authority of law.

COUNT I. –Violation of Plaintiff’s Constitutional Rights

13) Paragraphs 1 through 12 are realleged and incorporated herein by reference.

14) By carrying an unconcealed handgun onto the campuses and other real estate of George Mason University, Plaintiff is exercising a right protected by the Self-executing provisions of the Va. Const., Art. I, §13.

15) The Defendant cannot prohibit, deny, infringe, or interfere with rights expressly protected by the Constitution of Virginia that represents the sovereign will of the people and is the public policy of this Commonwealth.

16) By carrying an unconcealed handgun into the campuses and other real estate of George Mason University, Plaintiff is exercising a right protected by the Self-executing provisions of the U.S. Const., amend. II.

17) The Defendant cannot prohibit, deny, infringe, or interfere with rights expressly protected by the Constitution of The United States.

18) By carrying an unconcealed handgun onto the campuses and other real estate of George Mason University, Plaintiff is exercising a right protected by the provisions of the U.S. Const., amend. XIV.

- 19) The Defendant cannot prohibit, deny, infringe, or interfere with rights protected by Constitution of the United States.
- 20) By carrying an unconcealed handgun onto the campuses and other real estate of George Mason University, Plaintiff is exercising a right protected by the Self-executing provisions of the Va. Const., Art. I, §1.
- 21) The Defendant cannot prohibit, deny, infringe, or interfere with rights protected by the Constitution of Virginia.
- 22) By carrying an unconcealed handgun onto the campuses and other real estate of George Mason University, Plaintiff is exercising a right protected by the Self-executing provisions of the Va. Const., Art. I, §11.
- 23) The Defendant cannot prohibit, deny, infringe, or interfere with rights protected by the Constitution of Virginia.
- 24) Regulation 8VAC35-60-20 is unconstitutional as applied to Plaintiff as it violates the Plaintiff's constitutional rights as aforementioned under both the Virginia and United States Constitutions.

COUNT II. – No Authority to Regulate Handguns

- 25) Paragraphs 1 through 24 are realleged and incorporated herein by reference.
- 26) Va. Const. Art. I, §14 states “That the people have a right to uniform government; and, therefore, that no government separate from, or independent of, the government of Virginia, ought to be erected or established within the limits thereof.”
- 27) The Defendant has no express or implied statutory authority under § 23-91.29 or § 23-9.2:3 to regulate the carrying of unconcealed handguns by persons who may lawfully possess

such handguns or concealed handguns by persons who have a valid concealed handgun permit under Va. Code §18.2-308 (D) or those exempted under §18.2-308(B)(C).

28) The General Assembly created the general law on concealed weapons under §18.2-308 and has not relinquished its authority or the control of where and who may legally possess concealed weapons to the Defendant. Va. Code § 23-91.24 mandates that George Mason University, “[s]hall be subject at all times to the control of the General Assembly.” George Mason University as an agent or arm of the state may not prohibit what the General Assembly expressly permits and its regulation therefore is *ultra vires* and void *ab initio*.

29) In carrying a concealed handgun onto George Mason University, the Plaintiff is exercising a right conferred by the General Assembly through state law under Va. Code §18.2-308.

30) Regulation 8VAC35-60-20 is invalid as it applies to Plaintiff as the Defendant has no authority to regulate handguns and deny the Plaintiff his statutory and common law rights.

COUNT III. – No Authority to Make or Maintain Regulations Inconsistent with State Law

31) Paragraphs 1 through 30 are realleged and incorporated herein by reference.

32) In carrying a handgun onto George Mason University, the Plaintiff is exercising a right conferred by state law and the fundamental law of the state, the Constitution of Virginia.

33) Va. Code § 23-91.29(a) expressly states that the Board of George Mason University, “The board of visitors shall be vested with all the rights and powers conferred by the provisions of this title insofar as the same are not inconsistent with the provisions of this chapter and the general laws of the Commonwealth.”

- 34) Va. Code § 1-248 expressly states, “The Constitution and laws of the United States and of the Commonwealth shall be supreme. Any ordinance, resolution, bylaw, rule, regulation, or order of any governing body or any corporation, board, or number of persons shall not be inconsistent with the Constitution and laws of the United States or of the Commonwealth.”
- 35) Regulation 8VAC35-60-20 is inconsistent with Va. Code §18.2-287.4., and its express exemption to permit holders “on any public street, road, alley, sidewalk, public right-of-way, or in any public park or any other place of whatever nature that is open to the public”.
- 36) George Mason University’s Fairfax, Arlington, Prince William and Loudoun County campuses, buildings and facilities completely fall within the ambit of Va. Code §18.2-287.4.
- 37) Regulation 8VAC35-60-20 is inconsistent with Va. Code § 55-248.9(A)(6).
- 38) The Defendant as a provider of public housing may not require a person from entering into an agreement that amounts to “a prohibition or restriction of any lawful possession of a firearm within individual dwelling units unless required by federal law or regulation.” The residents of those dwelling units would have every lawful right to keep and bear arms under both the Virginia and United States Constitutions and to allow their guests to keep and bear arms within their residence.
- 39) Regulation 8VAC35-60-20 is invalid as it applies to Plaintiff as it is inconsistent with Va. Code §18.2-287.4. and § 55-248.9(A)(6).

Wherefore, Plaintiff prays that this court:

- 1) Declare that Regulation 8VAC35-60-20 is unconstitutional as applied to Plaintiff and enjoin Defendant and his employees, agents, and representatives from enforcing Regulation 8VAC35-60-20 as to Plaintiff.

- 2) In the alternative, declare that Regulation 8VAC35-60-20 is invalid as applied to plaintiff and enjoin Defendant and his employees, agents, and representatives from enforcing Regulation 8VAC35-60-20 as to Plaintiff.

- 3) Award costs, fees, or any other relief this court may deem proper.

Respectfully Submitted

By: _____
Rudolph DiGiacinto
Pro se