

**VIRGINIA:**

**IN THE CIRCUIT COURT FOR THE COUNTY OF FAIRFAX**

**RUDOLPH DIGIACINTO**

*Plaintiff,*

v.

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

*Defendant.*

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Case No. CL-2008-14054

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**PLAINTIFF’S RESPONSE TO DEFENDANTS OPENING BRIEF**

**COMES NOW** the Plaintiff, Mr. Rudolph DiGiacinto, *pro se*, respectfully submits this Response to the Defendant’s Opening Brief.

**INTRODUCTION**

“It may be laid down as a primary position, and the basis of our system, that every Citizen who enjoys the protection of a free Government, owes not only a proportion of his property, but even of his personal services to the defence of it ... that the Total strength of the Country might be called forth at a Short Notice on any very interesting Emergency.” George Washington, *Sentiments of a Peace Establishment* (May 2, 1783), in 26 *The Writings of George Washington From the Original Manuscript Sources, 1745-1799*, 374-397 (John C. Fitzpatrick ed. 1936).

**RESPONSE**

***The Constitution and Laws are Supreme***

Not all Virginians were patriots and some of the College of William and Mary wished ill upon the fledgling Commonwealth. “Five of the pre-Revolutionary faculty had been vociferous loyalists: Thomas Gwatkin and Samuel Henley fled to England and the visitors removed President John Camm, John Dixon, and Emanuel Jones after Independence. Only the Reverend James Madison and John Bracken became patriots.” John E. Shelby, *The Revolution in Virginia 1775-1783*, 238 (1988). “The newest invasion caught Virginia authorities entirely by surprise...Both Continental and Virginia intelligence broke down disastrously.” *Id.* at 221-222.

My ever dear Fanny: Could I have entertained a doubt of the propriety of my conduct in endeavoring to remove you beyond the reach of the British army, the sight of this unhappy spot must immediately have removed it. The traces of British cruelty were but faint as they marched through the country. Here they remained for some days, and with them pestilence and famine took root, and poverty brought up the rear. Instead of attempting a florid description of the horrors of this place, I will endeavor to give you an account of the situations of a few individuals with whom you are acquainted. Our friend Madison and his lady (they have lost their son) were turned out of their house to make room for Lord Cornwallis. Letter of Lt. Colonel St. George Tucker to his wife (July 11, 1781), in *The Southern Campaign, 1781, Guilford Courthouse to the Siege of Yorktown, Narrated in the Letters of St. George Tucker to his Wife*, by Charles Coleman Jr. in *7 Magazine of American History*, 207 (1881).

General Lord Cornwallis evicted William and Mary president James Madison out of his dwelling house. No law or regulation disarming individuals and therefore the militia, will stop a resolute and determined enemy or criminal. Armed individuals can mitigate the damages caused by malevolent acts, and armed individuals as part of the militia acting in concert can stop or slow invasions and insurrections. “The Rangers continue their duty according to your Excellency’s commands...The neighbors having fitted out their sons and other young men well acquaint, so their ranging is as low as my Plantation at Pohick...The Inhabitants still continue from their houses, but abundance better satisfied since part of the Rangers is constantly ranging among

them.” Col. George Mason to Governor Nicholson (Reference to an Indian invasion that killed Thomas Barton and his Family including his three children in what today is Fairfax County.), July 10, 1700. Kate M. Rowland, 1 *The Life of George Mason, 1725-1792*, at 25-27 (1892).

### ***The Public Policy of the State***

The public policy of the Commonwealth can be found in the Constitution and the laws made by the General Assembly not the Board of Visitors of George Mason University. “In effect, defendants invite us to second guess the law makers on matters of economics, sociology and public policy. This we may not do.” *Infants et al. v. Virginia Housing Development Authority*, 221 Va. 659, 671, 272 S.E.2d 649, 656 (1980). “The legislative power to declare public policy is subject, of course, to the constraints of the Constitution.” *Id.* at 678.; 16 Am. Jur. 2d Constitutional Law § 192 (2009)(“It is generally recognized that the public policy of a state is to be found in its constitution and statutes.”). “[w]here a constitution asserts a certain right, or lays down a certain principle of law or procedure, it speaks for the entire people as their supreme law, and is full authority for all that is done in pursuance of its provision. In short, if complete in itself, it executes itself.” *Davis v. Burke*, 179 U.S. 399, 403 (1900). “What the Constitution says shall not be done, cannot be done. If the Constitution says something is not a proper governmental function, no amount of legislative language can make it so.” *Button v. Day*, 208 Va. 494, 503, 158 S.E.2d 735, 741 (1968).

That free government rests, as does all progress, upon the broadest possible diffusion of knowledge, and that the Commonwealth should avail itself of those talents which nature has sown so liberally among its people by assuring the opportunity for their fullest development by an effective system of education throughout the Commonwealth. Va. Const. Art. I, § 15.

“The General Assembly may provide for the establishment, maintenance, and operation of any educational institutions which are desirable for the intellectual, cultural, and occupational development of the people of this Commonwealth.” Va. Const. Art. VIII, § 9. These constitutional provisions are the public policy of the state as well as Va. Const. Art. I, §13. GMU’s regulation restricts the broadest possible diffusion of knowledge, and the intellectual, cultural, and occupational development of the people of this Commonwealth. If the Second Amendment Symposium were held today at GMU’s facility, GMU by their own admission would deny those attendees the opportunity to develop their knowledge about the United States Constitution merely because those people exercised their right and duty to be at all times armed under the Virginia Constitution. Allowing Mr. DiGiacinto access only to the grounds of the University defeats the purpose of the Commonwealth’s public policy on education.

Mr. DiGiacinto is currently an inactive Hunter Safety Instructor for the Virginia Department of Game and Inland Fisheries (VDGIF) but has previously taught many K-12 school age children firearms safety. The premise that GMU has many children on campus and that GMU’s regulation is needed to protect these children is a red herring. The VDGIF teaches hunter safety classes with firearms in schools<sup>1</sup> as these students are allowed to be around firearms under § 18.2-308.1(B). “The right of the whole people, old and young, men, women and boys, and not militia only, to keep and bear arms of every description, and not such merely as are used by the militia, shall not be infringed, curtailed, or broken in upon, in the smallest degree; and all this for the important end to be attained: the rearing up and qualifying a well-regulated militia, so vitally

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<sup>1</sup> <http://www3.dgif.virginia.gov/ClassSchedule/ClassSearch.aspx>. GMU might want to contact the VDGIF and have instructors come out to the University and teach those children hunter safety and the survival skills of life with hands on firearms safety training. “The primary goal of every university is to educate not regulate its students”. *George Mason University v. Floyd*, 275 Va. 32, 37, 654 S.E.2d 556, 558 (2008).

necessary to the security of a free State.” *District of Columbia v. Heller*, 128 S. Ct., 2783, 2809 (2008)(quoting with approval *Nunn v. State*, 1 Ga. 243, 251 (1846)). The GMU Regulation prohibits all citizens even those who can prove they have training under Va. Code §18.2-308(D). It’s disingenuous to say that citizens might not have training to safely handle firearms and then prohibit the very people who have had to prove training, or to not allow firearms training at GMU. It’s analogous to GMU cutting a man’s legs off and then condemning him for being a cripple.

The argument used in the GMU Opening Brief and affidavits is very similar to the argument that was used to try and stop the building of an airport at the University of Virginia when commercial airplanes were in their relative infancy and one Army plane did in fact fall out of the sky. “The objections that there would be danger of planes falling upon the homes of the objectors and consequently injuring the same, was founded upon a mere apprehension of injury and constituted no ground for the denial of the permit.” *Batcheller v. Commonwealth*, 176 Va. 109, 117, 10 S.E.2d 529, 533 (1940). Objections of the same kind can be made to any individual constitutional right the government disagrees with. The Virginia Declaration of Rights however was written as a restriction upon government power to preserve the natural rights of the people.

To shew you that I have not been an idle Spectator of this great Contest, and to amuse you with the Sentiments of an old Friend upon an important Subject, I inclose you a Copy of the first Draught of the Declaration of Rights, just as it was drawn by me, & presented to the Virginia Convention, where it received few Alterations... We have laid our new Government upon a broad Foundation, & have endeavoured to provide the most effectual Securities for the essential Rights of human nature, both in Civil and Religious liberty; the People become every Day more & more attach’d to it; and I trust that neither the Power of Great Britain, nor the Power of Hell will be able to prevail against it. Letter of George Mason to Mr. Brent (October 2, 1778), in 1 *The Papers of George Mason*, 433-437 (Robert A. Rutland ed. 1970).

“You’l have seen your Instructions to propose Independance and our resolutions to form

a Government. The Political Cooks are busy in preparing the dish, and as colo. Mason seems to have the Ascendancy in the great work, I have Sanguine hopes it will be framed so as to answer its end, Prosperity to the Community and Security to Individuals, but I am yet a stranger to the Plan.” Letter of Edmund Pendleton to Thomas Jefferson, (May 24, 1776), in 1 *The Papers of Thomas Jefferson*, 296 (Julian P. Boyd ed. 1950).

The representatives of the People of Virginia unanimously declared independence from Great Britain on May 15, 1776 and in so doing abolished the old government of Virginia. The Virginia Declaration of Rights was issued on June 12, 1776. The Constitution or form of government did not exist until June 29, 1776 and proved that people can exist without government, but that the government cannot exist without its creator, the people. *Kemper v. Hawkins*, 3 Va. (1 Va. Cases) 20, 69-76 (1793). See also:

Even during the suspension, or annihilation of government, the laws of nature and of moral obligation, which are in their nature indissoluble, continue in force in civil society. Hence social rights and obligations, also, are respected, even when there is no government to enforce their observance. This principle, during state convulsions, supplies the absence of regular government...**Any contract or consent conveying useless or pernicious powers is invalid, as being founded on an error about the nature of the thing conveyed**, and its tendency to the end proposed...But if the government be founded in fear, constraint, or force, although the administration should happen to be mild, the people, being deprived of the sovereignty, are reduced to a state of civil slavery. Should the administration, in this case, become tyrannical, they are without redress. Submission, punishment, or a successful revolt, are the only alternatives. 1 *St. George Tucker Blackstone's Commentaries: With Notes and Reference, to the Constitution and laws of the Federal Government of the United States and of the Commonwealth of Virginia, Appendix*, at 11-13 (William W. Birch & Adam Small 1803). When the constitution is founded in voluntary compact and consent, and imposes limits on the efficient force of the government, or administrative authority, the people are still the sovereign; the government is the mere creature of their will; and those who administer it are their agents and servants. *Id.* at 14. The right of self-defence is the first law of nature. In most governments it has been the study of rulers to confine this right within the narrowest limits possible. Wherever standing armies are kept up, and the right of the people to keep and bear arms is, **under any colour or pretext whatsoever**, prohibited, liberty, if not already annihilated, is on the

brink of destruction. *Id.* at 300.

The assertion by GMU on Page 8 of their Opening Brief and supported with a non cited quote by “Tomas Hobbes” is false as St. George Tucker, an actual founding father of Virginia has proven above. Thomas Hobbes in his 17<sup>th</sup> century work the *Leviathan*, did state: “The second, the sum of the right of Nature: which is, ‘by all means we can, to defend ourselves.’” Thomas Hobbes, *Leviathan: The Matter Form and Power of a Commonwealth, Ecclesiastical and Civil*, 66 (London 1886). This is what St. George Tucker stated *supra*, “The right of self-defence is the first law of nature”. And as George Mason stated, “If the clause stands as it is now, it will take...what divine providence has given to every individual – the means of self-defence.” Statement of Colonel George Mason (June 14, 1788) in 3 *The Papers of George Mason*, at 1075-1076 (Robert A. Rutland ed. 1970).

The perverse logic that the police power is needed to crush the rights of the people in order to save their rights or to gain safety defeats the whole purpose and role of the government as the servants of the people to protect their rights under the self-executing provisions of Va. Const Art. I. § 13. The people have codified this constitutional provision as the means to obtain safety. General Lord Cornwallis used this same logic at the Battle of Guilford Courthouse when he purposely fired upon friend and foe alike to gain victory. He won that battle, but at the price of killing 25 percent of his army. *The Revolution in Virginia 1775-1783, supra* at 274. His strategy cost him the war. “[w]hile sovereign powers are delegated to the agencies of government, sovereignty itself remains with the people, by whom and for whom all government exists and acts. And the law is the definition and limitation of power.” *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886). “We said the police power, while flexible, could not stretch that far because if it did, ‘no property right, indeed, no personal right, could co-exist with it.’” *Cupp v.*

*Board of Supervisors of Fairfax County*, 227 Va. 580, 594, 318 S.E.2d 407, 415 (1984); “The police power is not paramount to the Constitution” *City of Richmond v. Va. Railway & Power Co.*, 141 Va. 69, 90, 126 S.E. 353, 359 (1925).

### ***Due Process and Equal Protection***

“The legality of an ordinance is to be tested not by what has been done under it, but what may by its authority be done under it.” *City of Winchester v. Glover*, 199 Va. 70, 72, 97 S.E.2d 661, 663 (1957); *Assaid v. City of Roanoke*, 179 Va. 47, 51, 18 S.E. 2d 287, 288 (1941). As previously stated in the Plaintiff’s Opening Brief, pages 14-15, the General Assembly allows felons as “police officers” under § 18.2-308.2(B) to be armed including at so-called “sensitive” places: §18.2-283.1 (Courthouse), §18.2-308.1(B)(Schools), and § 18.2-287.01 (Airport Terminal). Denying full access to GMU’s facilities to Mr. DiGiacinto while allowing full access to an armed felon under the color of the law violates the due process and the equal protection clauses of the Virginia and United States constitutions. *Etheridge v. Medical Centers Hospitals*, 237 Va. 87, 97-99, 376 S.E.2d 525, 530-531 (1989).

GMU’s reliance on *ACLU v. Mote*, 423 F.3d 438 (4th Cir. 2005) is misplaced.

In *Mote* we upheld a university policy that permitted only members of the university community or groups they sponsored to distribute literature in certain areas of the campus. The critical difference between *Mote* and the case at hand is that in *Mote* the university did *not* reserve to itself discretion to *deny access* for any reason it chose. Rather, in *Mote*, “[l]ack of available space [wa]s the *only* acceptable reason” for the university to deny access. *Id.* at 442. *Child Evangelism Fellowship of Maryland, Inc., v. Montgomery County Public Schools*, 457 F.3d 376, 388 (4<sup>th</sup> Cir. 2006)(citing *ACLU v. Mote*, 423 F.3d 438 (4th Cir. 2005)).

GMU’s reliance on *Pleasant Grove City v. Summum*, 129 S.Ct. 1125 (2009) is also similarly misplaced. “Respondent and the Court of Appeals analogize the installation of permanent monuments in a public park to the delivery of speeches and the holding of marches

and demonstrations, and they thus invoke the rule that a public park is a traditional public forum for these activities. But “public forum principles... are out of place in the context of this case...By contrast, public parks can accommodate only a limited number of permanent monuments...“one would be hard pressed to find a ‘long tradition’ of allowing people to permanently occupy public space with any manner of monuments.” *Pleasant Grove City v. Summum*, 129 S.Ct. 1125, 1137 (2009).

The case at bar is about personal security and the security of a free state, not space limitations. Even if the cases cited did allow GMU to “shut-down” the University to non-students, it must do so on an equal footing and not violate the equal protection clause of the U.S. Const. amend XIV. *Tate v. Department of Development and Conservation*, 133 F.Supp. 53 (E.D. Va. 1955)(Applying *Brown v. Board of Education, of Topeka, Kansas*, 349 U.S. 294, (1955) and other cases to Virginia State Parks, even if the land is leased by the government to a third a party); *Child Evangelism Fellowship of Maryland*, 457 F.3d 376, at 384. “If [a] provision has no other purpose or effect than to chill the assertion of constitutional rights by penalizing those who choose to exercise them, then it is patently unconstitutional” *Ohree v. Commonwealth*, 26 Va. App. 299, 305, 494 S.E.2d 484, 487 (1998).

The holding in *Nordyke v. King*, 563 F. 3<sup>rd</sup> 439, 459 (9<sup>th</sup> Cir. 2009) on pages 8-9 of GMU’s brief is not settled law. The case is currently being briefed for rehearing before an *en banc* panel of the 9<sup>th</sup> Circuit at the time of the writing of this brief. It also has no bearing in Virginia as the General Assembly has preempted localities from legislating on firearms including gun shows under §15.2-915.

Our citizens have been always free to make, vend and export arms. It is the constant occupation and livelihood of some of them. To suppress their callings, the only means perhaps of their subsistence, because a war exists in foreign and distant countries, in which we have no concern, would scarcely be

expected. It would be hard in principle, and impossible in practice. The law of nations, therefore, respecting the rights of those at peace, does not require from them such an internal derangement in their occupations.

Letter of Thomas Jefferson to George Hammond (May 15, 1793), in 9 *The Writings of Thomas Jefferson*, 90-91 (Andrew A. Lipscomb ed. 1903). The *current* holding in *Nordyke*, is contrary to Virginia's history, its Constitution and the will of the Virginia General Assembly:

Whereas, many citizens of this Commonwealth who own and enjoy the use of firearms are greatly disturbed by the proposals of certain groups to regulate and restrict gun ownership and such citizens are of the firm and undying conviction that the safety of our nation from enemies within and without makes even more necessary proper training in the safe and effective use of firearms which can only be guaranteed by a continuation of the existing right to own and employ such weapons; now, therefore, be it

Resolved by the House of Delegates, the Senate concurring, That the right to keep and bear arms guaranteed by the second amendment to the Constitution of the United States and which right is an inalienable part of our citizens' heritage in this State shall not be infringed; that any action taken by the General Assembly of Virginia to interfere with this right would strike at the basic liberty of our citizens; that no agency of this State or of any political subdivision should be given any power or seek any power which would interfere with, restrict, or prohibit the purchase, possession, or use of firearms by any citizen of good standing for the purpose of personal defense, sport, recreation or other non-criminal activities; and be it further

Resolved, That the Clerk of the House of Delegates be instructed to send a copy of this resolution to every member of the Virginia Delegation in the Congress of the United States as a reminder of the fact that laws cannot prevent tragedies but bad laws can bring on in their train even greater tragedies.

House Joint Resolution No. 21. *Journal of the House of Delegates*, 98 (Richmond 1964).

GMU's reliance on the Common Law police power "memorialized" in Va. Code § 2.2-3900 on page 7 of their Opening Brief is also misplaced. Va. Code § 2.2-3900 *et seq.*, is the Commonwealth's public policy against discrimination and sexual harassment. The case at bar has nothing to do with those statutes and even the section citing general safety is void as previously cited on Page 19 of the Plaintiff's Opening Brief under *Avalon Assisted Living*

*Facilities, Inc. v. Zager*, 39 Va. App. 484, 508, 574 S.E.2d 298, 309-310 (2002); *Andrews v. Board of Supervisors*, 200 Va. 637, 641, 107 S.E.2d 445, 448 (1959).

The quotation of Colonel George Mason in his *Remarks on Annual Elections for the Fairfax Independent Company* found in the footnote of pages 6-7 of GMU's Opening Brief and used to support Va. Const Art. I, § 3 as cited on page 6, actually conveys the foundation of the militia. Colonel Mason's words were not meant to take away the natural right of the "means of self-defence", it served to gain societal preservation and the safety in numbers of a militia to fend off enemies "that by union and mutual assistance they might secure the rest." The giving up of "some of their natural rights" was and is as George Washington described *supra* the giving up of a "proportion of his property, but even of his personal services to the defence of it". Or as Thomas Jefferson stated "that it is their right and their **duty** to be at all times be armed". Colonel Mason was explaining how and why armed individuals band together to protect the community from the tyranny of evil men, whether they are in the form of individuals, a foreign enemy, or the government itself. His grandfather as the County Lieutenant had done this very thing using armed individuals against an attack by Native Americans *supra*. In the next sentences after the end of the quotation in GMU's opening brief, Colonel Mason continues:

...Every power, every authority vested in particular men is, or ought to be, ultimately directed to this sole end; and whenever any power or authority whatever extends further, or is of longer duration than is in its nature necessary for these purposes, it may be called government, but it is in fact oppression. Upon these natural just and simple positions were civil laws and obligations framed, and from this source do even the most arbitrary and despotic powers this day upon earth derive their origin. Strange indeed that such superstructures should be raised upon such a foundation! But when we reflect upon the insidious arts of wicked and designing men, ***the various and plausible pretences for continuing and increasing authority***, the incautious nature of the many, and the inordinate lust of power in the few, we shall no longer be surprised that free-born man hath been enslaved, and that those very means which were contrived for his preservation have been perverted to his ruin; or, to borrow a metaphor from Holy Writ, that the kid hath been seethed

in his mother's milk. *Remarks on Annual Elections for the Fairfax Independent Company* (April 1775) in 1 *The Papers of George Mason*, 229-232 (Robert A. Rutland ed. 1970).

The *Remarks on Annual Elections for the Fairfax Independent Company* is itself an explanation of why Colonel George Mason formed and armed the people of Fairfax County through the First Independent Company in Virginia.

This company is essentially different from a common collection of mercenary soldiers. It was formed upon the liberal sentiments of public good, for the great and useful purposes of defending our country, and preserving those inestimable rights which we inherit from our ancestors; it was intended in these times of extreme danger, when we are threatened with the ruin of that constitution under which we were born, and the destruction of all that is dear to us, to rouse the attention of the public, to introduce the use of arms and discipline, to infuse a martial spirit of emulation, and to provide a fund of officers, that in case of absolute necessity, the people might be the better enabled to act in defence of their invaded liberty. *Remarks, supra.*

The Crown however wanted take away the arms of the people and Virginia Governor Lord Dunmore ordered that the Independent Companies be disbanded<sup>2</sup>. Colonel George Mason obliged the Governor and in his capacity as a member of the Virginia Committee of Safety, turned the Independent Companies into Minute Men Battalions. Letter of George Mason to Martin Cockburn (August 22, 1775), in Kate M. Rowland, 1 *The Life of George Mason, 1725-1792*, 206-208 (1892).

It is true that the phrase “the right of the people to keep and bear arms shall not be infringed” was not part of the Virginia Constitution until 1971. Those words however added no new rights that Virginians did not already possess by the Ancient Virginia Charters of 1606, 1609, and 1611. “If it is asked at whose Expence they were settled? The Answer is obvious at the Expence of the private Adventurers our Ancestors; the Fruit of whose Toil and Danger we now

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<sup>2</sup> Letter of Lord Dunmore to the Virginia House of Burgesses on June 10, 1775. Available at [http://memory.loc.gov/cgi-bin/query/r?ammem/rbpe:@field\(DOCID+@lit\(rbpe17801700\)\)](http://memory.loc.gov/cgi-bin/query/r?ammem/rbpe:@field(DOCID+@lit(rbpe17801700)))

enjoy.” Colonel George Mason (June 6, 1766) *To The Committee of Merchants in London*, *supra*, at 70-71.

America was conquered, and her settlements made, and firmly established, at the expence of individuals, and not of the British public. Their own blood was spilt in acquiring lands for their settlement, their own fortunes expended in making that settlement effectual; for themselves they fought, for themselves they conquered, and for themselves alone they have right to hold...The feelings of human nature revolt against the supposition of a state so situated as that it may not in any emergency provide against dangers which perhaps threaten immediate ruin...The God who gave us life, gave us liberty at the same time; the hand of force may destroy, but cannot disjoin them. Thomas Jefferson, *A Summary View of the Rights of British America* (July 1774), in *The Portable Thomas Jefferson*, 3-21 (Merrill D. Peterson ed. 1975).

The Colony of Virginia returned under the authority of Crown Rule after the English Civil war only upon the condition that private arms would be protected under Section 13 of the Surrender of the Country. Va. Stat. at Large, 1 Hening 365 (1823). Va. Const. Art. I, §13 (1776) and Va. Const. Art. I, §13 (1971) are equal in their protections of individual rights. See *Aldridge v. Commonwealth*, 4 Va. (2 Va. Cas.) 447, 449 (1824).

The United States Supreme Court in *Heller*, 128 S. Ct., at 2822 unambiguously stated that “In sum, we hold that the District’s ban on handgun possession in the home violates the Second Amendment, as does its prohibition against rendering any lawful firearm in the home operable for the purpose of immediate self-defense.” This holding also holds true under Virginia law including any dwelling house. Dwelling house and home are synonymous terms. *Giles v. Commonwealth*, 277 Va. 369, 375, 672 S.E.2d 879, 883 (2009)(“We hold that a house is a dwelling house pursuant to Code § 18.2-89 when the house is used for habitation, including periodic habitation. Periodic habitation does not require that the house be used at regular intervals. Rather, periodic habitation requires that when the house is used, it is used for the purpose of habitation. Thus, a dwelling house is a house that one uses for habitation, as

opposed to another purpose.”); *Alston v. Commonwealth*, 32 Va. App. 661, 665-666 529 S.E.2d 851, 853-854 (2000)(“[T]he term ‘dwelling house’ has been defined, in the context of Code § 18.2-77, as “a place which human beings regularly use for sleeping”.); *Alexander v. Commonwealth*, 19 Va. App. 671, 675, 454 S.E.2d 39, 41 (1995)(“The officers’ entry into the appellant’s motel room violated his privacy right to be free from an unreasonable search and seizure.”).

Thus, the provision of the GMU Regulation or any GMU policy for students banning handguns in any “Student Residence Buildings” is unconstitutional. Every student who resides in such dwelling houses has the Constitutional right to possess a handgun if they are otherwise eligible to lawfully possess a handgun. Mr. DiGiacinto therefore may visit if invited, any resident who themselves may lawfully possess a handgun in a student residence building. Mr. DiGiacinto has the right to association and that association may not be abridged by GMU’s violation of the Public Policy of the Commonwealth in its Constitution or laws. *Rotary Int’l v. Rotary Club of Duarte*, 481 U.S. 537, 548 (1987)(“The Court also has recognized that the right to engage in activities protected by the First Amendment implies ‘a corresponding right to associate with others in pursuit of a wide variety of political, social, economic, educational, religious, and cultural ends.’ *Roberts v. United States Jaycees*, 468 U.S. at 468 U. S. 622. See *NAACP v. Claiborne Hardware Co.*, 458 U. S. 886, 458 U. S. 907-909, 932-933 (1982). For this reason, ‘[i]mpediments to the exercise of one’s right to choose one’s associates can violate the right of association protected by the First Amendment. . .”).

## **CONCLUSION**

The Virginia Constitution and not GMU's regulation must prevail. *Kemper v. Hawkins*, 3 Va. (1 Va. Cases) 20, 83 (1793). Virginia law already provides for the misuse of firearms under Va. Codes § 18.2-279(Discharging firearms or missiles within or at building or dwelling house); § 18.2-280(Willfully discharging firearms in public places); § 18.2-282(Pointing, holding, or brandishing firearm, air or gas operated weapon or object similar in appearance); § 18.2-56.1. Reckless handling of firearms); § 18.2-308.7(Possession or transportation of certain firearms by persons under the age of 18); § 18.2-56.2(Allowing access to firearms by children) etc.

GMU has neglected to adequately train its students to arms as the history of colleges and the Constitution commands. It may not now claim fear of firearms in the hands of citizens or students and pass a regulation restricting the rights of the people because of its own acts of negligence. The regulation is not narrowly tailored for there is a less restrictive means of obtaining safety; Va. Const. Art. I, § 13.

But your first object should be a well regulated Militia Law; the People, put under good Officers, would behave in quite another Manner; and not only render real Service as Soldiers, but would protect, instead of distressing, the Inhabitants. What I would wish to have particularly insisted upon, in the New Law, should be, that every Man, capable of bearing Arms, should be obliged to turn out, and not buy off his Service by a trifling fine. We want Men, and not Money.” Letter of George Washington to Governor William Livingston (Jan. 24, 1777), in 7 *The Writings of George Washington from the Original Manuscript Sources 1745 - 1799*, 56 (J. Fitzpatrick ed. 1932).

GMU needs to start implementing plans to train its students in firearms safety, the manual exercise, military manoeuvres, and tactics generally and to form its own student corps. Education is the primary business of GMU. Just as the “[t]he two apartments adjacent to the basement story of the Rotunda” at UVA were proposed for military training, the GMU Field House can be turned into an indoor pistol and rifle range for the training of the students. “It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy

encroachments thereon. Their motto should be *obsta principiis.*” *Boyd v. United States*, 116 U.S. 616, 635 (1886).

***Defendant’s Opening Brief Untimely Filed***

In violation of the Supreme Court rules § vs-cr-1:12, and § vs-cr-8:8., the attorney for GMU in the Certificate certified that the brief was mailed on June 11, 2009, the day the brief was due to the court. Mr. DiGiacinto who lives about six miles from GMU did not receive the brief until June 16. The envelope is imprinted with a Pitney Bowes stamp dated June 12, 2009 on the obverse of the envelope. The reverse of the envelope bears another date stamp of being mailed on June 15, 2009. This has substantially prejudiced Mr. DiGiacinto to timely respond to the Defendant’s Brief. See Plaintiff’s Exhibit A. This is not an isolated incident. In a recent U.S. 4<sup>th</sup> Circuit case one month ago involving GMU, the page limits proscribed by that court were violated and a sanction against the brief was imposed by the court. See *Iota XI Chapter of Sigma Chi Fraternity v. George Mason University*, 566 F.3d 138 (4th Cir. 2009)(Decided May 13, 2009). Mr. DiGiacinto requests that the Defendant’s Opening Brief be stricken or any other sanctions that the court deems appropriate under its discretion commensurate with the level of the breach of the rules of the court.

Respectfully Submitted,

By: \_\_\_\_\_  
Rudolph DiGiacinto, *pro se*