

0001

1 V I R G I N I A:
 2 IN THE CIRCUIT COURT FOR THE COUNTY OF FAIRFAX
 3 -----:
 4 RUDOLPH DiGIACINTO, :
 5 Plaintiff, :
 6 vs. : Case No.
 7 THE RECTOR AND VISITORS OF : CL-2008-14054
 8 GEORGE MASON UNIVERSITY, :
 9 Defendant. :
 -----:

Fairfax, Virginia

Wednesday, July 22, 2009

11 The Trial in the above-captioned matter was
 12 held pursuant to notice, at Fairfax County Circuit
 13 Court, 4110 Chain Bridge Road, Fairfax, Virginia,
 14 before Joony Lomenzo, RPR, of Capital Reporting
 15 Company, a Notary Public in and for the
 16 Commonwealth of Virginia, commencing at 9:56 a.m.,
 17 before the HONORABLE MICHAEL P. McWEENY.
 18
 19
 20
 21
 22

0002

A P P E A R A N C E S

1 On behalf of Plaintiff:
 2 RUDOLPH DiGIACINTO, PRO SE
 3
 4 On behalf of Defendant:
 5 DAVID DRUMMEY, ESQUIRE
 6 George Mason University
 7 4400 University Drive
 8 Fairfax, Virginia 22030
 9 (703) 993-2619
 10
 11
 12
 13
 14
 15
 16

17
18
19
20
21
22
0003

P R O C E E D I N G S

THE COURT: Good morning.

MR. DRUMMEY: Good morning, Your Honor.

MR. DiGIACINTO: Good morning, Your Honor.

THE COURT: We are here in the case of DiGiacinto -- did I pronounce that correctly, sir?

MR. DiGIACINTO: That's correct, sir.

THE COURT: I'm sorry. I don't know who is who right now.

MR. DiGIACINTO: Yes. I am Rudolph DiGiacinto. I am plaintiff, pro se.

THE COURT: All right. And that's versus George Mason University, correct?

MR. DRUMMEY: That's correct, Your Honor.

THE COURT: All right.

MR. DRUMMEY: My name is David DrummeY.

THE COURT: All right. Let me first ask a couple questions about procedure. I realize that there may be some preliminary issues you wish to argue, but procedurally, do both sides stipulate to the facts which were asserted in the briefs?

MR. DRUMMEY: Yes, Your Honor. There are

0004

no facts in dispute.

MR. DiGIACINTO: Yes. This is a pure question of the law.

THE COURT: All right. Therefore, under those circumstances, it is deemed the prerequisite to raise the constitutional challenge has been met by the plaintiff, so it would be the burden of the defense when we reach that stage to go forward on the issue of the strict scrutiny rule. Would you concur with that?

MR. DRUMMEY: Yes, Your Honor. That's fine.

THE COURT: All right. Are there any preliminary matters before I hear argument?

MR. DiGIACINTO: Yes. That was the first matter. We are not exactly sure of the way this was set up who is going to go first, the plaintiff or the defendant. So it's up to you who you would

19 like to see -- to argue first.

20 THE COURT: Well, truthfully, I am going
21 to give both sides the opportunity to argue both
22 times.

0005

1 MR. DRUMMEY: Okay.

2 THE COURT: And the reason for that being
3 I want to hear all the issues, make sure there's
4 nothing that hasn't been addressed by either side,
5 not leave an issue where there is well, I wish I
6 had had the opportunity to say type situation. So
7 what I am going to do, understanding where the
8 burden lies, I am going to ask you to go forward
9 first, sir.

10 MR. DiGIACINTO: Okay.

11 THE COURT: Then I will give the
12 university a chance to respond, then your reply,
13 and then for their reply. And I will know exactly
14 where we are at that stage.

15 MR. DiGIACINTO: Okay.

16 THE COURT: Are there any other
17 preliminary matters?

18 MR. DRUMMEY: Not that we're aware of,
19 Your Honor.

20 THE COURT: All right. Well, I will tell
21 you I have read the briefs in detail, so I
22 understand what the basic facts are that have now

0006

1 been stipulated to. Do you wish to proceed, sir?

2 MR. DiGIACINTO: Yes, sir. Thank you,
3 Your Honor.

4 Your Honor, as you said, you have read the
5 briefs, so you're aware that this is kind of a
6 historic day. This is the first time since the
7 founding of Jamestown that Article 1 Section 13,
8 the right to keep and bear arms, is before the
9 Court in Virginia, or a direct case before the
10 Court in Virginia.

11 I will present information. I am going to
12 rely mostly on my briefs because they are very
13 extensive and there's no sense in repeating what's
14 in my briefs. So I want to say that since the
15 founding of Jamestown every Virginian has had the
16 right to keep and bear arms. As Thomas Jefferson
17 stated, it is not only their right, but their duty
18 at all times to bear arms.

19 When George Mason founded the Fairfax
20 Independent Company of Volunteers in 1774, he did

21 this as a means of defense, self-defense, and in
22 defense of the community. In July of 1774, George

0007

1 Mason wrote the Fairfax County Resolves in which he
2 stated that, "The most important and valuable part
3 of the British Constitution upon which its very
4 existence depends is the fundamental principle of
5 the peoples being governed by no laws to which they
6 have not given their consent or their
7 representatives freely chosen."

8 The people through their Constitution have
9 stated that under Article 1 Section 13 that is the
10 safety and security of a free state. The people
11 have said that. The people have also stated that
12 the right to uniform government is a fundamental
13 right that no government independent of or separate
14 from the government of Virginia ought to be erected
15 or established therein.

16 Under Article 4 Section 1 of the Virginia
17 Constitution George Mason and the others wrote that
18 the legislature shall be provided --

19 THE COURT: Excuse me, sir. I just want
20 you to know I can't do anything about the prisoners
21 that are in the holding cell. If at some time it
22 becomes difficult for you because of the noise they

0008

1 are making, I have no problem waiting for a moment.
2 And I will ask my security officer to try and quiet
3 them now. I am used to it, so I hear past it, but
4 I know it's hard to argue when someone is talking
5 in your ear.

6 (Brief recess.)

7 THE COURT: That was not to interrupt you.
8 It was to try and make it easier for you. Go right
9 ahead, sir.

10 MR. DiGIACINTO: Thank you. So what we
11 have is Article 4 Section 1 of the Virginia
12 Constitution that vests the legislative branch in
13 the General Assembly. And that goes back to
14 Mason's statement that no laws be passed, but by
15 the representatives of the people. George Mason
16 University is not the representative of the people.
17 The General Assembly is.

18 The General Assembly cannot delegate away
19 its authority. The people have vested them with
20 the authority to legislate in any area of the law
21 only restricted by the rights of the Constitution.
22 So when they delegate authority, it must be

0009

1 delegated in definite form and cannot just be a
2 generalized here, go at it and do whatever you
3 want. It must be delegated in form.

4 Now, the Virginia Declaration of Rights,
5 again, was made as a restriction upon power upon
6 the Commonwealth. It declared the natural rights
7 of the people. As George Mason would say, we have
8 laid our new government upon a broad foundation
9 endeavoring to provide the most effectual
10 securities for the essential rights of human nature
11 both in civil and religious liberty. These were
12 essentials rights, natural rights.

13 And as in my brief, it stated the
14 timeline. May 15th, 1776, the General Assembly at
15 the time, the representatives of the people,
16 dissolved the old government. The Declaration of
17 Rights was not issued until June 12th of 1776. The
18 constitutional form of government did not exist
19 until June 29th, 1776.

20 And as St. George Tucker states in Kamper
21 vs. Hawkins and also in the commentaries of
22 Blackstone, the people existed without a

0010

1 government. And one of the reasons they are able
2 to do that is because the people themselves are the
3 creators of the government, at least in our form of
4 government, constitutional republic, as St. George
5 Tucker goes on and states. So the people exist in
6 a state of nature. There are delegates.

7 George Mason was asked to present a
8 Declaration of Rights. Most of that Declaration of
9 Rights was based upon Remarks on Annual Elections
10 for the Fairfax Independent Company. At least one
11 fourth to almost a half of the intellectual origins
12 of the Declaration of Rights can be found in this
13 document of 1775. So we have the information going
14 on.

15 So there is an anomaly that you probably
16 noticed, that Virginia's Declaration of Rights of
17 1776 does not contain those words; therefore, the
18 right of the people to keep and bear arms shall not
19 be infringed. That was not added until the 1971
20 Constitution. But it added no new rights because
21 under the ancient charters of 1606, 1609 and 1611
22 every Virginian was required to be armed at all

0011

1 times.

2 And the first records that we have, that
3 Thomas Jefferson actually had, William Waller
4 Hening then puts into the Hening's Statutes at
5 Large. Well, 1623, the General Assembly
6 promulgates in saying that no man is to go to work
7 in the ground without their arms and no party
8 should go out without -- nobody should go out
9 without a party sufficiently armed.

10 So since the founding of Jamestown there
11 has never been a time up to 1776 where the people
12 of Virginia were not allowed to be armed. And, in
13 fact, when the English civil war takes place, the
14 colony -- all the colonies were basically on their
15 own. And then when the English civil war is
16 completed to its end, Virginia agrees to go back
17 under the authority of the crown rule only upon the
18 authority or only upon the surrender of the country
19 in a compact guaranteeing that.

20 Interestingly enough, under Section 13
21 private arms were to be protected and public arms
22 were to be given up. To give a better

0012

1 understanding, in the colony of Virginia, everyone,
2 every free male, including free negros -- using the
3 term of the time -- free negros, free mulattos and
4 free Indians were required to serve in the militia.
5 It generally ranged between the age of 16 to 60
6 depending upon the militia act. They were all
7 required to supply their own firearms.

8 And on the Cavalry side, usually the
9 general planters were soldiers and were in the
10 Cavalry. They had to supply their own horses and
11 all their own accoutrements. They had to supply
12 their own musket or fusil, which is a short musket,
13 and they had to keep at their house a pound of
14 powder and four pounds of balls. If they were foot
15 soldiers, they had to acquire their own musket and
16 a bayonet well fitted to that musket.

17 They also had to carry three charges of
18 powder with them when they mustered. They had to
19 keep at their place of abode a pound of powder and
20 four pounds of balls. Anyone who was in the colony
21 of Virginia had 18 months in which they were to
22 acquire these items of the militia. And in that

0013

1 time, once they acquired these items, they were
2 allowed to keep them in their house for their own
3 safety, for their own use and safety, and for the

4 use of the crown's militia.

5 They were required to muster at least once
6 a year. And if they went and during muster they
7 became refractory, they were required to be bound
8 neck and heels for a period of no longer than five
9 minutes. If they continued to be refractory, their
10 officers -- they could put them in jail. This is
11 the disciplining of the militia.

12 Everyone who was in the militia at one
13 time had to serve as what's called a militia
14 patroller. Militia patrollers were sent out during
15 the nighttime and daytime to patrol Virginia, to
16 make sure everybody was where they were supposed to
17 be and to detect invasions and insurrections.
18 These invasions and insurrections at the time
19 earlier in Virginia were Native American invasions.
20 They later on became slave rebellions.

21 Virginia became almost -- by the time of
22 1774, almost -- it was about 45 percent slave and

0014

1 55 percent free. So slave rebellions were a big
2 deal in Virginia, and that's why they had the
3 militia patrollers. So they were out and they had
4 to serve time in these places.

5 And so there is also a misconception in
6 people's understanding of the militia versus the
7 minutemen. Militiamen had to be armed at all
8 times. We lived in a society of militiamen in the
9 18th century. If you wanted to go visit your
10 neighbors who maybe lived ten miles down the road
11 and you had a horse and there happened to be an
12 insurrection while you were down there, you didn't
13 have time to go back to your home to get your
14 firearms or your firelock. You had to be ready
15 right then and there.

16 And the person -- your commanding officer
17 had to get up and get the men right then and there.
18 You just couldn't leave. So the minutemen were
19 actually militia soldiers who were just trained
20 more often. And what happens is during the
21 American Revolution in 1775, Mason, George Mason
22 himself, which is actually stated in the brief, the

0015

1 independent company -- which he was the first one
2 -- he formed the Fairfax Independent Company on
3 September 21st, 1774.

4 And after that point every county in
5 Virginia, including the City of Williamsburg,

6 starts arming themselves as independent companies.
7 During this time the war, Lord Dunmore's War, is
8 going on out in the west. One of the reasons why
9 Mason does what he does is Lord Dunmore is no
10 longer in country. He is out in western
11 territories.

12 And so all the counties start arming
13 themselves. And it's not until April 21st, 1775,
14 when Patrick Henry -- well, the magazine -- the
15 governor steals the gunpowder from the magazine.
16 The first actual military action takes place
17 against the former -- former government and Lord
18 Dunmore. Lord Dunmore is trying to reconcile with
19 them, separate and reconcile.

20 Dunmore before he leaves to go to a Man O'
21 War leaves on a -- basically leaves on the desk I
22 will become your governor again. The first thing

0016

1 you're going to have to do is get rid of your
2 independent companies. They are putting a cramp in
3 his style. He can't do what he wants to do because
4 the people are resisting his rules.

5 George Mason obliges because now George
6 Mason and 11 other members of the Virginia
7 Committee of Safety, they turn and melt down all
8 the independent companies and turn them into
9 minutemen battalions. The colony of Virginia is
10 broken up into 16 divisions and the minutemen
11 battalions are made.

12 Interestingly enough, they start to train
13 these minutemen, who are single men who volunteer
14 for these services in which George Mason, Jr.,
15 George's son, becomes a minuteman. They train at
16 least twice a year -- I mean two weeks a year
17 starting off two weeks a year, and then they train
18 once a month after that, which became a standard
19 for the National Guard. You go in for two weeks,
20 do your training, and then once a month you go for
21 your duty. That was the origin for where those
22 things came from.

0017

1 So the minutemen, they are ready at all
2 times, but they are actually more trained. And the
3 object -- and the reason you see the words in here
4 many times "trained to arms" when he writes these
5 things is because during the 18th century they used
6 musket smoothbores. And the idea was to mass
7 firepower. In order to mass firepower, to fire in

8 one direction, everybody had to be on the same
9 page.

10 Everybody had to load at the same time
11 upon command and everybody had to fire at the same
12 time, and at the same time they are firing at you.
13 So you want to get as much lead going in their
14 direction that's coming in your direction, so you
15 had to be trained to arms. And that term doesn't
16 mean I know how to pull the trigger of a firearm or
17 keep it in a safe direction. It meant you had to
18 be trained to arms.

19 And Mason also talks about composed of the
20 body of the people. This is a learning experience,
21 part of the revolution. Composed of the body of
22 people. Not only in this war, but in the French

0018
1 and Indian war, when the king had brought over
2 mercenary soldiers and had attacked them and used
3 them, especially in the revolutionary war, they had
4 understood that a militia must be tied to the
5 people.

6 People who have -- who have some relation
7 to the community, that is the safety and security
8 of a free state. It's a compulsory service and
9 it's people who do it because it's their community,
10 for their own self-defense and defense of the
11 community. So when it says composed of the body of
12 the people, it means you can't be Hessians. You
13 can't be mercenary soldiers. You have to be part
14 of the people of this community. And again, you
15 can't be mercenary.

16 So the police force would not be
17 considered the militia because they are
18 mercenaries. They are paid. So the militia are
19 the people themselves. And that's actually part of
20 Heller. It's now case law, which was stated by
21 Virginians, that the militia is the entire
22 arms-bearing population. Everybody can bear arms.

0019
1 That is the militia.

2 So we have that they are composed of the
3 body of the people to make sure the people who are
4 in the militia are the people in that area and they
5 don't -- the governor can't go out and get -- hire
6 goons basically, like the king did, and get the
7 mercenaries, the Hessians to come in. That's when
8 Mason says we don't want to suffer the fate of the
9 Germans coming over here and being mercenary

10 soldiers.

11 This is in the ratification. He is
12 talking about the second amendment essentially,
13 saying we don't want the fate -- to suffer the same
14 fate as the Germans. That is why I said his famous
15 line. I asked who are the militia. The militia
16 are the people themselves. And if that paper on
17 that table gets no alteration, the militia of a
18 future date may not consist of all classes high and
19 low, but may be confined to the lower classes.

20 And that's why it was so important to them
21 that they, the militia, be composed of the body of
22 the people, that the people themselves had to go

0020

1 out, the people themselves during the 18th century
2 were required. As stated in the brief, they were
3 required to apprehend all felons, any or all
4 felons, that they eye-witnessed. If they did not
5 do so, they also would be charged with a felony.

6 As it's stated in the brief, they were
7 required under the common law posse comitatus to be
8 out as a civil force. The governor could ask the
9 civil or military forces to be raised and they
10 would be required to go out.

11 There's a sheriff in Fairfax County,
12 Daniel McCarty. He is a sheriff. His son, Darrell
13 McCarty, married Sarah Mason, George Mason's
14 daughter, back and forth. So there is a sheriff in
15 Fairfax County. In fact, Fairfax County does not
16 have a police force until 1945, I believe. So it's
17 been a sheriff and the people themselves in Fairfax
18 County for the entire time. They have been the law
19 enforcement and the civil authority in Virginia.

20 So they have not only the posse comitatus,
21 which means that the people themselves have to be
22 ready at all times to defend their community, they

0021

1 have the Hue and Cry, which they must adhere to and
2 track down criminals, and then the militia itself
3 when they cannot -- when an insurrection occurs,
4 the militia must be ordered out. And it's done by
5 county, every county.

6 In fact, the judges of the court, the
7 justices of the court of Fairfax County, appointed
8 -- George William Fairfax was the county
9 lieutenant. He would have been -- a recommendation
10 was sent to the governor of Virginia, and then that
11 governor appoints the county lieutenant. And in

12 Fairfax County during the 18th century before 1774,
13 George William Fairfax was the county lieutenant.
14 He is the chief commanding officer of Fairfax
15 County.

16 He is a loyalist and leaves Virginia in
17 1774 and his plantation Belvoir, which is now Fort
18 Belvoir, but he never returned because he is a
19 loyalist. And Bryan Fairfax stays here as a
20 loyalist and as several others. And so there are
21 some loyals here in Virginia. And so the county
22 lieutenant at that point turns away and becomes --

0022

1 they start to restructure things around. But
2 generally during the 18th century, the county --
3 the county recommended who the person would be.
4 The governor appointed that person as the county
5 lieutenant.

6 Now, George Mason is a colonel of the
7 militia. He became a colonel not because he was
8 county lieutenant, but because during times of war,
9 which was the French and Indian war -- on
10 August 17th, 1756, George Mason was awarded the
11 commission of colonel for supplying arms and
12 getting our friendly Indians to help during the
13 French and Indian war to supply Colonel George
14 Washington during the French and Indian war. So
15 that's how the colonel comes about.

16 But what happens is you have a structure.
17 And it actually starts with the governor down to
18 the county lieutenant down to the lowliest private.
19 That's where it comes from. The King's power comes
20 from God. And that's how it was done. So in 1774
21 when George Mason founds the Fairfax Independent
22 Company, that independent company was outside the

0023

1 crown's militia.

2 And, in fact, one of the reasons why the
3 governor asked them to disband it is it was outside
4 the crown's law essentially. They formed these
5 independent companies, but that was not part of the
6 main militia. So that's -- you have extra legal
7 affairs going on there because the crown -- once
8 they were -- the House of Burgesses were disbanded
9 on May 27th, 1774, there was no longer a
10 legislature in Virginia.

11 And so in September we needed our own
12 defense. The militia law had expired, so they
13 founded the independent companies. So it was kind

14 of an extra legal affair, but it was not a
15 mercenary force. Again, it was composed of the
16 body of the people. In fact, Mason places a levy.
17 It's actually a joint venture between Mason -- it
18 becomes a joint venture between Mason and George
19 Washington. Washington becomes the captain of
20 Fairfax Independent Company.

21 They apply a three-pound or a
22 three-shilling tax upon every person in Fairfax

0024

1 County, which, again, angers the governor because
2 tithables are required -- everyone in Virginia is
3 required to tithe and that tithe goes to the
4 governor. And so now they're taking money away
5 from the governor by tithing the people of Fairfax
6 county to arm them. So a three-shilling tax is
7 placed upon every person in Fairfax County to pay
8 for the Fairfax Independent Company. And that's
9 what's going on.

10 And then when George -- Lord Dunmore takes
11 the powder, Captain Patrick Henry takes the
12 independent company to the capital. He gets
13 halfway, there's a stalemate, the money is passed
14 hands, 330 pounds of sterling is given in lieu of
15 the gun powder. And that kind of ends. The
16 governor says if you come any closer, I am going to
17 burn down the capital.

18 And more than that, which is the greatest
19 fear of all in Virginia at the time, there were
20 about 300 muskets in the governor's palace. And he
21 is going to arm all the slaves and he's going to
22 turn the slaves against them, which he does anyway.

0025

1 He eventually does that. So that happens in the
2 spring of 1775, but these independent companies are
3 -- what eventually happens is to take them out.
4 And then in August of 1775 they are turned into
5 minutemen battalions, and then in December of 1775,
6 the governor has left because he can't compete with
7 an independent company because now they are all
8 controlled by all the patriots in Virginia.

9 So he sends out -- the governor leaves in
10 July of 1775 and kind of sets up shop in Norfolk,
11 Virginia. And that's where in December of 1775 the
12 Battle of Great Bridge happens. And after the
13 Battle of Great Bridge it forces the governor out
14 of Virginia. And from that point on Virginia is in
15 patriot hands and allows then for Virginians in

16 1776 to declare independence, and then later on the
17 British come back.

18 But that's how -- what's happening is from
19 the founding of Jamestown they are always armed,
20 always there, and they find -- and they form their
21 own militias composed of the body of the people.
22 So they not only were civil authority, they were

0026

1 the military authority. And that's the way it was.
2 It's basically been that way ever since except for
3 it's only been in the last 30 years that what we
4 consider gun control laws have been here.

5 There have been some laws that were passed
6 right after the American Civil War. They were
7 passed. But if we look back to the colony of
8 Virginia, if you are a free, white, male
9 landholder, there was no place that was off limits
10 to you. And in fact, you were required to be armed
11 in all places and there was no place you could not
12 go because you were part of the militia.

13 And if you were part of the militia, it
14 means somebody who was your -- well, they would
15 call it maybe that you were better. Someone who
16 was higher in statute -- or stature, I should say,
17 they were your superior officers. All the officers
18 in the 18th century were landholders, and so
19 everybody -- wherever you went somebody knew you
20 because you had to be in a militia.

21 So there was a class structure by officers
22 who were there by class. And those people had

0027

1 control basically of where people went and what
2 they did, and so they know everybody. And so when
3 people get in trouble, such as George Mason's
4 nephew, then everybody knows who everybody is. And
5 the nephew is put in jail in Fairfax County and he
6 burns the jail down in Fairfax County at the time
7 and George Mason has to pay a bond to get him out.

8 So everybody knows everybody because
9 everybody knows everybody is in the militia and so
10 they have to muster. And what's interesting is
11 because everybody has to tithe to the Church of
12 England, because everybody is required to go to
13 church in England, to lessen the burden of
14 everybody having to go from great distances to meet
15 at certain places, the militia trained at churches.
16 Everyone was required to bring their firearms to
17 the churches on Sunday because that's where the

18 militia training was, at church on Sundays.
19 And that doesn't change until after the
20 American Civil War when the reconstruction
21 government imposes upon Virginia volunteer militia
22 forces, and then their idea of people having

0028

1 firearms -- it is made illegal to possess firearms
2 on Sunday. And so that's where that law
3 originated, not being able to possess firearms in
4 church on Sunday.

5 But up until that point the militia
6 trained at churches because that's where people
7 met. They had to bring their firearms to muster on
8 Sundays because it was just impractical to do
9 otherwise. It would be too much of a burden on the
10 people. So when they meet on church on Sunday they
11 would bring their firearms.

12 Remember they live in a four mile-an-hour
13 world by horse or they walked. That's the only way
14 they got around in those days, so it was too much
15 of a burden on people to go to different places of
16 that nature. So that's essentially where we are in
17 1776. And where we are today and the other
18 sections of this I will just go over -- there was
19 just one section. I will go more into the -- now I
20 will shift over into the section about delegating
21 authority.

22 GMU has made the assertion that the

0029

1 declaratory judgment cannot be used to determine
2 whether or not they have authority. And as I have
3 proffered under Article 1 Section 14 of the
4 Virginia Constitution, which is stated in Kamper
5 vs. Hawkins, when any branch of government exceeds
6 its authority, it violates Article 1 Section 14 as
7 part of Kamper vs. Hawkins. So we have at least
8 some case law along that meaning of Article 1
9 Section 14.

10 And that's what's happened. So they
11 cannot exceed their authority. And it's stated in
12 many cases the Constitution of Virginia is a
13 limitation on power. So when they exceed their
14 authority, it's certainly an actionable cause under
15 Article 1 Section 14 because the people -- and,
16 again, the people, under Heller, means individuals.
17 And the cause of action is to determine whether or
18 not they have the authority to promulgate a
19 regulation in the first place.

20 And they said it cannot be done through
21 declaratory judgment, but I just want to bring it
22 to the attention of the Court that in one of the

0030

1 briefs, they cite Citiland vs. Commonwealth, ex
2 rel., Attorney General Kilgore. And that case
3 itself is a declaratory judgment act merging with
4 the Virginia Administrative Process Act. It states
5 that Citiland filed an appeal in the circuit
6 seeking declaratory injunctive relief.

7 Now, this actually was a case decision,
8 not a statutory decision because the Attorney
9 General, what he did was there was a list of
10 tobacco settlements and Citiland said they should
11 be on that list of people who are allowed to be
12 considered okay with the state and then they can
13 consult tobacco products again. The Attorney
14 General did not allow them to be on that list until
15 they paid punitive damages, and then their
16 contention was the Attorney General has no
17 authority to do that. The General Assembly
18 promulgated who may be on this list.

19 So the Court in Citiland states that it is
20 the province of the judiciary to determine
21 questions of law, that is pure questions of law are
22 the province of the judiciary. And that is what

0031

1 the Attorney General said. And it says, "It
2 necessarily follows that the a priori question
3 whether the statute delegates or withholds
4 discretion is itself a question of statutory
5 interpretation, one implicating our duty of de novo
6 review."

7 So they have stated that -- the Court
8 stated that whether or not they have any authority
9 is directly in the courts. That's where it's
10 supposed to be because the courts have a special
11 competence over whether or not something is
12 constitutional or unconstitutional and whether that
13 delegation of authority is proper in that sense.

14 So that -- so we are properly here before
15 this Court to determine declaratory judgment and to
16 determine whether or not they have authority. And
17 also, there was a case listed in my brief basically
18 stating whether or not they have authority. It's
19 Ellinger vs. The Commonwealth. It is an early
20 case, 1903. And there was also an assertion here
21 about their determination should have great weight

22 because the General Assembly has acquiesced.

0032

1 And this is a quote from Ellinger. "It is
2 suggested that the state has acquiesced in or
3 ratified wherein some way morally bound by what was
4 done. The legislature it is true to a large extent
5 represents the Commonwealth, but it does so in
6 subordination of the Constitution of the state.

7 It can do nothing which that instrument
8 prohibits and what is confided to it must conform
9 in its mode of action to the requirements of the
10 Constitution. If it transcends its power or if it
11 acts in contravention of the Constitution, its acts
12 are void. They confer no rights and bind no man
13 and all the world is charged with a notice of
14 limitation to which the Constitution imposed."

15 It doesn't matter whether or not the
16 General Assembly has acquiesced because if what
17 they have acquiesced in is unconstitutional, then
18 it is the province of the judiciary to determine
19 whether it's unconstitutional. It doesn't matter
20 whether they have acquiesced in the act if that act
21 has been a delegation of authority that the General
22 Assembly cannot delegate away.

0033

1 And that, again, is the province of the
2 judiciary to determine whether or not that act has
3 been properly delegated and whether or not the mere
4 act of saying that for the protection of the people
5 and safety that -- the case law in my brief says
6 that that's not sufficient enough. It must be
7 specifically stated that they have the requirement
8 or they have the authority.

9 If you compare or contrast the Virginia
10 Game Department, in which I happen to be a former
11 instructor, I am an inactive instructor now -- in
12 the Virginia Game Department, the very first thing
13 that comes up is firearms and the definition of
14 firearms. You will find nothing whatsoever in any
15 of George Mason's enabling legislation mentioning
16 the word "firearms."

17 And the opinion of the Attorney General,
18 which was just issued this September, on the
19 Department of Conservation and Recreation, which is
20 a true agency of the Commonwealth, determined they
21 have no authority to promulgate a regulation
22 because it's not in their enabling legislation to

0034

1 regulate firearms and they must follow the law or
2 the general statutes of the law. The general
3 statutes and the Constitution are the public policy
4 of the Commonwealth.

5 George Mason University, again, cannot
6 make policy. Their legislation -- or their
7 regulations -- legislations. Their regulations is
8 not the policy of the Commonwealth. The laws and
9 the Constitution of the Commonwealth are the policy
10 of the Commonwealth. And they cannot make policy.
11 That is up to the Constitution and the General
12 Assembly, which in Article 4 Section 1 they have
13 delegated the representatives to make public policy
14 or the laws of the Commonwealth.

15 And their own enabling legislation says
16 that they may not be inconsistent with the laws of
17 the Commonwealth and that they are subject at all
18 times to control of the General Assembly. And the
19 foreign state case, which was Shurtleff vs.
20 University of Utah, is a case right on point.
21 Exact same thing. The University of Utah, they
22 decided that they have -- they have the same thing.

0035

1 They are under control of the General
2 Assembly and had no authority to pass their
3 regulations on firearms. It was not within their
4 purview to do that. They must comport their
5 regulations to the Constitution of Utah. And the
6 same thing goes true for Virginia. The university
7 must comport their regulations to the Constitution
8 of Virginia and any delegated authority must be a
9 lawful delegation of authority to them to
10 promulgate that regulation, otherwise they must
11 comport to the laws, the statutes.

12 And there's a statute out there that says
13 any place open to the public in the county, in
14 which George Mason University has all their
15 campuses, then that's a law controlling upon them.
16 That's essentially my brief in general. And that's
17 where -- I will end right here at this point. I
18 think that's a -- I will let them reply and see and
19 we'll go from there.

20 THE COURT: Thank you, sir.

21 MR. DiGIACINTO: You're quite welcome.

22 THE COURT: Mr. Drummey, good morning.

0036

1 MR. DRUMMEY: Good morning, Your Honor.
2 Just so it's fresh, to the last point that Mr.

3 DiGiacinto has made, those cases that he quoted
4 assume that there was a regulation that was in
5 violation or inconsistent with the law. I think
6 you have to make that determination first before
7 you get to whether or not you can challenge a
8 regulation. And that's why I will start out with
9 just whether or not this regulation is
10 constitutional.

11 The university's core objective is to
12 provide higher education in a safe teaching and
13 learning environment. In the wake of recent campus
14 tragedies, the board implemented narrowly tailored
15 regulations prohibiting the carrying of weapons in
16 academic buildings and at the university's events.

17 These designated areas are not public
18 roads, paths or open parks. They are places where
19 students and guests congregate to attend classes,
20 to study in libraries, to attend sporting and
21 educational events. There is nothing in the
22 regulation that forbids anyone from traversing

0037

1 across the open campus with their firearm openly.

2 Mr. DiGiacinto would like to continue
3 using the Fenwick Library, an academic building on
4 the Fairfax campus, while he openly carries a
5 firearm. Essentially, Mr. DiGiacinto is arguing
6 that as a citizen of the Commonwealth, he has the
7 right to carry his firearm on the university's
8 campuses at any time and any place, including
9 academic buildings.

10 And in the Supreme Court case District of
11 Columbia v. Heller, the Supreme Court struck down a
12 D.C. statute prohibiting home handgun ownership.
13 The Court was quick to qualify the ruling and held
14 like most rights the right secured by the second
15 amendment is not unlimited.

16 "Nothing from our opinion should be taken
17 to cast doubt on longstanding prohibitions on the
18 possession of firearms by felons and the mentally
19 ill or laws forbidding the carrying of firearms in
20 sensitive places, such as schools and government
21 buildings." In other words, the second amendment
22 rights, just like the first amendment rights, are

0038

1 not absolute and unlimited.

2 The Court's review today is fairly
3 straightforward. The test of constitutionality by
4 the Court is to determine if the regulation was

5 narrowly tailored to further a compelling state
6 interest. The wisdom of the lawmakers in an acting
7 statute is entirely relevant. Mr. DiGiacinto's
8 argument that such a regulation does not promote
9 campus safety may stimulate a debate, but it's
10 clearly impertinent to this Court's analysis.

11 First, the regulation is narrowly
12 tailored. In enacting this regulation, the board
13 appreciates citizens' constitutional right to
14 openly carry firearms on public lands. The
15 regulation does not forbid Mr. DiGiacinto from
16 openly carrying his firearm on campus roads,
17 sidewalks, paths, fields or the forest. It only
18 forbids Mr. DiGiacinto from openly carrying his
19 firearm in buildings and at certain university
20 events.

21 Second, campus safety in sensitive places
22 is a compelling state interest. A safe environment

0039

1 is necessary to commit the fullest concentration on
2 intellectual pursuits of the student population.
3 University students should not be distracted,
4 frightened or alarmed or put in harms way while
5 attending classes, studying or attending a sporting
6 event.

7 Not only did the Heller court recognize
8 its schools could prohibit firearms, but also
9 recognized the government could restrict firearms
10 in sensitive places. The Court of Appeals in the
11 Ninth Circuit recently addressed sensitive places.
12 In the case Nordyke vs. King, the regulation
13 challenged was much broader than the regulation at
14 issue in this case.

15 The plaintiff challenged the regulation as
16 being overbroad, not defining what a sensitive
17 place might be. As the Ninth Circuit Court pointed
18 out, neither did Heller, and suggested that
19 schools, government buildings and places where
20 large numbers of people congregate fit into the
21 category of sensitive places.

22 Certainly academic buildings,

0040

1 administrative buildings, students' residence
2 buildings and dining facilities and university
3 sporting, entertainment and educational events fit
4 into the category of a sensitive place. Citizens
5 that are not students or employees do not have an
6 entitlement to even be present in these sensitive

7 locations. The university can certainly condition
8 nonstudents' and nonemployees', such as Mr.
9 DiGiacinto DiGiacinto's, presence and when they are
10 allowed by the university to come on the campus and
11 attend or use our facilities.

12 Under the Fourth Circuit case ACLU vs.
13 Mote, the university could theoretically prohibit
14 Mr. DiGiacinto from even entering onto campus
15 grounds, much less entering into buildings with his
16 firearm. As the Mote court pointed out, the campus
17 is not akin to a public street, park or theater,
18 but instead an institute of higher learning that is
19 devoted to its mission of public education.

20 That mission necessarily focuses on
21 students and other members of the university
22 community. Accordingly, it has not traditionally

0041
1 been opened to the public at large, but instead has
2 been a special type of enclave that is devoted to
3 higher education.

4 Campus safety in sensitive places is a
5 compelling state interest. The fact that Mr.
6 DiGiacinto and nonstudents and nonemployees are
7 allowed to do research in the Fenwick Library does
8 not alter the fundamental nature and purpose of the
9 university. And the fact that the university
10 allows members of the public to enter into certain
11 buildings does not change the nature and the
12 purpose of the university into a public park or a
13 public highway where carrying open firearms might
14 traditionally be constitutionally protected.

15 Additionally, the university would not
16 only like to protect its adult community members,
17 but it also has many minor community members. Over
18 352 freshman for this fall semester will be under
19 the age of 18, summer educational camps held at the
20 university attract over 50,000 elementary and high
21 school students on a yearly basis.

22 The university has a child development

0042
1 center where approximately 130 children of students
2 and employees are enrolled. You will see them
3 frequently in the Fenwick library, the same library
4 Mr. DiGiacinto would like to carry his firearm to.
5 Mr. DiGiacinto's desire to carry firearms while he
6 does his research would trouble the university's
7 objective to provide a safe teaching and learning
8 environment for its students.

9 With regards to Mr. DiGiacinto's
10 declaratory judgment action challenging the
11 university's authority, the university submits that
12 pursuant to Afzal vs. Commonwealth, the university
13 enjoys sovereign immunity. The Court found the
14 jurisdiction to the decide that matter. The
15 Commonwealth is generally immune from private suits
16 by its citizens. There are two exceptions,
17 expressed waiver of sovereign immunity by the
18 General Assembly or a self-executing constitutional
19 provision.

20 As Afzal made it clear, if there was any
21 doubt before, a private citizen cannot sue the
22 Commonwealth under a declaratory judgment. The

0043
1 university concedes though that Mr. DiGiacinto can
2 bring a declaratory action facially challenging the
3 Constitution of the regulation; however, a
4 declaratory judgment action regarding the authority
5 of the University to issue a regulation and to
6 issue a regulation that might be inconsistent with
7 state law is not an action that has been waived by
8 the General Assembly nor is it based on a
9 self-executing provision of the Constitution.

10 If what Mr. DiGiacinto suggests is true,
11 then every regulation or statute properly enacted
12 by the General Assembly or state agency would be
13 potentially subject to a private cause of action by
14 a citizen. Citizens who fail a driver's test can
15 bring a challenge in their local state courts
16 against the DMV. The Commonwealth could be subject
17 to a challenge by a citizen regarding a change in
18 tax regulations. This simply is not what the
19 General Assembly contemplated in creating the
20 statutory declaratory judgment action.

21 Moreover, as we know from Afzal and also
22 from the recent Calvert opinion, the Commonwealth

0044
1 has not waived its sovereign immunity with respect
2 to declaratory judgments. Not only is such a
3 challenge redundant to the facial challenge that is
4 allowable, but leads the Court down to a path that
5 creates a whole ghost of private rights of actions
6 against the Commonwealth that is neither consistent
7 with prior case law nor contemplated by the General
8 Assembly.

9 The cases Mr. DiGiacinto cites in
10 opposition to the university's position are prior

11 to Afzal. To the extent they are inconsistent with
12 Afzal on the sovereign immunity issue, they have
13 been overruled. Declaratory judgment is not a
14 proper form for Mr. DiGiacinto's complaints
15 regarding the regulatory authority of the agency.
16 The legislative body is probably the more
17 appropriate venue for Mr. DiGiacinto to complain.
18 And he should probably write his delegate or
19 senator down in Richmond.

20 Additionally, even if the Court does have
21 jurisdiction to hear Counts II and III, the
22 university by statute has the requisite authority

0045

1 to issue regulations because it affects a discreet
2 geographic area and a discreet number of people who
3 do come in contact with the university.
4 Prohibiting firearms in a sensitive place does not
5 run a foul of the second amendment, and is
6 therefore not inconsistent with state law.

7 Pursuant to Virginia Code 23-91.29, the
8 board of visitors shall be vested with all the
9 rights and powers conferred by the provision of
10 this title and shall make all needful regulations
11 concerning the university. In granting this broad
12 authority, the General Assembly recognized that the
13 university deals only with a discreet geographic
14 area and a discreet number of university community
15 members.

16 Without this broad authority, the
17 university could not making tuition rates,
18 application procedures, parking regulations, campus
19 building and facility use regulations, tuition
20 charges, procurement decisions or enter into
21 employment contracts. Just like the University of
22 Maryland in ACLU vs. Mote can make regulations

0046

1 affecting members of the general public on first
2 amendment issues, George Mason can certainly
3 condition entry by members of the public on campus
4 buildings on the second amendment issues.

5 Plaintiff cites an Attorney General
6 opinion regarding the regulatory authority of the
7 Department of Conservation and Recreation in
8 support of his argument that the university
9 exceeded its authority. Mr. DiGiacinto's reliance
10 on the AG opinion is misplaced.

11 First, the authority granted to the
12 university is much broader than the authority

13 granted to the department. The General Assembly
14 recognizing the university's regulations affect a
15 discreet number of citizens in a limited geographic
16 area concurred upon the university to make all
17 needful regulations consistent with the agency's
18 objective, and that is to provide higher education
19 for its students in a safe teaching and learning
20 environment.

21 In contrast, the General Assembly granted
22 the department only the power to prescribe rules

0047

1 and regulations necessary or incidental to the
2 performance of duties or executions of powers
3 conferred by law. It's a much more narrow grant of
4 authority by the General Assembly. Additionally,
5 it is important to point out that the department
6 jurisdiction is much broader and could affect every
7 citizen traveling the Commonwealth, whereas the
8 university is a much more limited jurisdiction in
9 who is affected by its regulation.

10 As the AG pointed out in its opinion, a
11 person's right to carry firearm openly is
12 considered universal within the Commonwealth
13 subject to definite and limited restrictions upon
14 certain locations and classifications of
15 individuals. The university was cognisant of the
16 citizens' rights and crafted a narrowly tailored
17 regulation.

18 Furthermore, pursuant to Peyton v.
19 Williams, the General Assembly is presumed to be
20 cognisant of an administrative or executive
21 construction of a particular law. And when such
22 construction continues without legislative

0048

1 alteration, it will be presumed to have acquiesced
2 to it.

3 No action has been taken either in 2008 or
4 2009 in General Assembly sessions with regards to
5 this regulation. Not only does the university have
6 the authority to enact this regulation, the General
7 Assembly has acquiesced to it. And further, as
8 alluded before, might the university suggest that
9 the proper avenue for Mr. DiGiacinto is to contact
10 his legislative representative down in Richmond on
11 this.

12 Finally, with regards to Count III, Mr.
13 DiGiacinto alleges that the university cannot enact
14 any regulation that is inconsistent with state law,

15 but Mr. DiGiacinto assumes that any abridgement of
16 the second amendment is automatically in
17 contradiction with state law. Mr. DiGiacinto's
18 assumption is clearly wrong. Not all
19 constitutional rights are unlimited, as the Heller
20 case pointed out.

21 If the Court accepts Mr. DiGiacinto's
22 premise, the university theoretically couldn't

0049

1 forbid him as a general member of the public from
2 walking into a history class and interrupting the
3 professor from teaching a class because that
4 somehow touched upon his constitutional right of
5 free speech.

6 In closing, the university has with the
7 proper authority crafted a narrowly tailored
8 regulation to achieve a compelling state interest
9 of campus safety.

10 That's all I have, Your Honor.

11 THE COURT: Thank you, sir.

12 MR. DRUMMEY: Thank you.

13 THE COURT: Your response.

14 MR. DiGIACINTO: I do not know if you want
15 this or not, but this is the documentation for the
16 history from my opening brief. It is the history
17 of colleges in the Commonwealth. It is a document
18 that shows that they are not, in fact, sensitive
19 places and that they have been since the founding
20 of our Commonwealth places where the people were
21 trained to arms. As Thomas Jefferson required,
22 every student -- in his letter -- not only in his

0050

1 letter to Peter Carr, who was a student at the
2 college of William & Mary, he states let your gun
3 be your constant companion on your walks.

4 THE COURT: Let me ask --

5 MR. DiGIACINTO: Yes.

6 THE COURT: Any objection to my receiving
7 this and making it a part of the record?

8 MR. DRUMMEY: No, Your Honor.

9 MR. DiGIACINTO: It's just documentation
10 that backs up what was in the very first part.

11 THE COURT: It will be received. I will
12 deem it to be an addendum to your brief.

13 MR. DiGIACINTO: Okay. So Jefferson
14 writes to his nephew let your gun be your constant
15 companion on your walks at the school, and the
16 school is the College of William & Mary. Let your

17 gun be your constant companion on your walks. So
18 here he is talking about having your firearm on
19 your walks.

20 Jefferson is contemplating and trying to
21 get the University of Virginia up and going. He
22 again writes to Peter Carr and again states that he

0051

1 believes that in the hours of recreation, students
2 there should be taught the military exercises and
3 that they should be taught military maneuvers,
4 military exercises and be under the command of a
5 student -- or actually form a student corps.

6 Later on is what's called the Rockfish Gap
7 Commission in early 1818 -- I believe it was 1818.
8 He writes back even longer about the gymnastics of
9 the school, which is in the brief. And it goes
10 into great detail of explanation that the students
11 should be -- in their hours of gymnastics and
12 recreation, they should be taught the military
13 exercises.

14 And they are required to attend these
15 exercises. And the two apartments adjacent to the
16 rotunda building are to be made and used for
17 military exercises and the university should supply
18 arms in the form of substitutes to the students.
19 That goes on to other universities and other --
20 other schools I should say. They are not all
21 universities.

22 Schools are given firearms in which they

0052

1 train their students. And in the classic case of
2 the Virginia Military Institute they have arms.
3 And even in their own brief they state that they
4 are required to have arms in their military
5 barracks. So the fact that there are arms at VMI
6 currently shows that they are not sensitive places
7 because the arms are there.

8 Also, in my brief I clearly point out
9 that -- and, again, I know this because I was a
10 former Virginia Department of Game and Inland
11 Fisheries instructor, a hunter safety instructor --
12 they teach at high schools and they teach at
13 elementary schools and middle schools hunter
14 safety, so they have under 18.2-308.1, I believe,
15 subsection B -- this is the school -- prohibition
16 of firearms at schools.

17 There is a section in section B that lays
18 out to allow training at these schools, and

19 especially people who live down in Augusta County
20 and those western counties. That's where they get
21 their training, at their middle schools and
22 elementary schools. So the General Assembly has

0053

1 already allowed firearms around children.

2 And also, under -- I believe it's 22, off
3 the top of my head. It's in my brief. They
4 allowed junior ROTC programs to happen at these
5 schools. So the General Assembly has already
6 allowed children to be around firearms and have
7 firearm safety training at schools, and so to say
8 that people who are of military age or military
9 draft age between 18 and 60 can't be around
10 firearms because they are sensitive, that's a
11 complete contradiction of what the General Assembly
12 has already allowed. They allowed firearms and
13 children to be trained.

14 And as in Nunn vs. State, which is stated
15 in the Heller case and in my case, the whole point
16 of this is to raise up a well-regulated militia
17 that all people -- men, boys, women, children --
18 are allowed, must be allowed, to have firearms.

19 The last point that he made about being
20 inconsistent with state law, I'm not talking about
21 inconsistent with the Constitution. I am talking
22 about inconsistent with statute. In 18.2-287.4,

0054

1 which the was the gist of the Attorney General's
2 opinion, they are inconsistent with that and the
3 opinion of the Attorney General. And when he
4 states about places that are off limits, the
5 Attorney General actually states in the opinion
6 what those places were. It's footnote 29.

7 Prohibiting the carrying of weapons in
8 places of religious worship, prohibiting the
9 carrying of weapons in courthouses, prohibiting the
10 carrying of weapons in air carrier terminals,
11 prohibiting the possession of weapons in school
12 property. Again, a university is not a school.
13 It's not under the Constitution of Virginia nor is
14 it defined under the statute as prohibiting
15 firearms in schools.

16 And also, prohibiting the possession of
17 firearms by persons acquitted by reason of
18 insanity, restricting persons adjudicated
19 incompetent from purchasing firearms, prohibiting
20 persons -- it goes on, but nowhere here is there

21 listed universities. So they are not a place
22 listed off as being a sensitive place in the

0055

1 opinion, which was just issued in September. So
2 that is not correct.

3 And also, in my brief -- it's title 55, I
4 believe -- the General Assembly about 15 years ago
5 in response to the Richmond Redevelopment and
6 Housing Authority, which they banned firearm
7 possession by the residents of that authority, that
8 actually became a federal case in the Fourth
9 Circuit, Eastern District of Virginia.

10 Because of that, the General Assembly
11 passed a law under that saying that public
12 housing -- people who reside in public housing have
13 the right to have firearms in their public housing.
14 And GMU as a supplier of public housing must abide
15 by the law of the General Assembly. The General
16 Assembly says if you provide public housing, then
17 you must allow those people to have firearms in
18 their residences.

19 And that is what they're inconsistent
20 with. They are inconsistent with that as well as
21 18.2-287.4. So they can not bar their students and
22 their students' residence buildings because they

0056

1 supply public housing. And the law is quite clear
2 that they cannot -- the General Assembly has stated
3 you cannot deny people the right to bear -- or to
4 keep arms in your residence in public housing. It
5 was passed specifically because of that case, the
6 Richmond Redevelopment and Housing Authority.

7 So, again, that's what it's inconsistent
8 with. It is inconsistent with 18.2-287.4 and the
9 law forbidding anybody who provides public housing
10 to bar them from having firearms in their
11 residence. That is what it's inconsistent with.

12 And their enabling statutes say
13 specifically they must not pass laws that are
14 inconsistent with state law. And they are
15 violating those two state laws. So they are not --
16 and it's -- I don't see how it can be narrowly
17 tailored. It's a total ban because the purpose of
18 a university is to educate people.

19 And as I stated in the brief, I attended
20 the firearms Second Amendment Symposium at George
21 Mason University. At that time I was carrying, but
22 they hadn't passed the regulation. So I was

0057

1 carrying then, and now they're saying that you
2 can't carry that there. After the Second Amendment
3 Symposium -- they have it every year somewhere in
4 the United States. But if I was to come back to
5 George Mason University, I couldn't carry there
6 because it's off limits.

7 But the public policy of the Commonwealth
8 in Article 1 Section 15 and Article 8 Section 9 is
9 to allow people to be educated and to give a
10 diffusion of knowledge. In fact, that Second
11 Amendment Symposium gave people CLE credits for
12 that. So for them to say that you can be
13 everywhere, but just not in places where you are
14 actually going to learn anything is actually a
15 total ban because you can't go anywhere in the
16 university not supplied with what it's supposed to,
17 and that's education.

18 Walking around the grounds is not
19 educational. It's good for exercise, but the point
20 of a university is to educate its people so that
21 they in turn can have the understanding of how the
22 government works in general and how they further

0058

1 themselves in the life of business or whatever the
2 profession they may choose.

3 And there are many events on George Mason
4 University that aren't tailored just to students.
5 They have rodeos. It is a classic example. They
6 have everything there. It's a perfect example. So
7 they are saying they can ban you from everywhere.
8 So it's actually -- it's an absolute total ban for
9 the purposes of which the university was created,
10 in which the public policy of this Commonwealth is
11 that they are to educate the people and provide the
12 most possible chances for people to learn.

13 And in Ohree -- I believe it's pronounced
14 Ohree vs. Commonwealth, anybody -- a law is
15 patently unconstitutional of those who want to
16 exercise their constitutional rights or deny them
17 for the mere reason that they want to exercise
18 their rights. So for them to say that it's
19 narrowly tailored, one, it's a complete
20 prohibition; two, there's a more efficient means
21 which the Constitution itself provides, and that's
22 Article 1 Section 13.

0059

1 It has been since the founding of this

2 Commonwealth, since the founding of Jamestown that
3 everyone was to be armed and to be trained. And
4 they had a duty to train their students. Just as
5 Thomas Jefferson stated, it was the duty of their
6 students to be trained to arms. And that is the
7 means to acquire safety, by training.

8 The Game Department trains children,
9 school-age children, all the time. There is no
10 problem with that. And so if they are afraid of
11 firearm safety, they also can deny people who have
12 permits to carry concealed weapons. People in
13 order to get a concealed weapon have to prove
14 training, such as I had to prove training. They
15 deny people and say those people may not have
16 enough training or people may not have enough
17 training, yet they deny the very people who by law
18 have had to prove training to be there.

19 And finally, which is an important point
20 at this point, the General Assembly through its
21 legislation for whatever reason, I have no idea,
22 allow convicted felons to be armed as police

0060

1 officers. And under their current regulation, the
2 only people who can be allowed to be armed at GMU
3 are armed felons, not law-abiding citizens because
4 police officers under Virginia as armed felons can
5 be armed during the performance of their official
6 duties.

7 That is a pernicious law and a violation
8 of which the Commonwealth is denying good people.
9 Taking the very beginning of the preamble, the good
10 people of Virginia, not armed felons. The General
11 Assembly for whatever reason has allowed armed
12 felons to be armed as police officers.

13 So right now as it stands, George Mason
14 University police officers, most of them are not
15 armed felons, but it allows it. So armed felons
16 are allowed to be armed at George Mason University,
17 but law-abiding citizens are not, and they have
18 access to every place at George Mason university.

19 So it's a complete prohibition. They have
20 a right to train their students so that they can
21 have the knowledge and understanding and to defend
22 themselves as a student corps, as the College of

0061

1 William & Mary did during the revolution. They had
2 their own student corps in defending themselves.

3 It's a pernicious law. It's a violation

4 of the whole reason that the Constitution -- the
5 people assembled to benefit themselves, not to have
6 felons lord over them and establish or to enforce
7 the laws of the Commonwealth. That's the job of
8 the people themselves. Composed of the body of the
9 people. That's my answer to them.

10 THE COURT: Thank you, sir. Last
11 comments, Mr. Drummeey.

12 MR. DRUMMEY: Thank you, Your Honor.

13 The examples of William & Mary in the 18th
14 century and VMI, they have different educational
15 objectives. George Mason University has been
16 formed to provide higher education, not any type of
17 military or gun programs. Its primary mission is
18 to provide higher education for its students in a
19 safe teaching and learning environment for its
20 students, not for members of the public. It has
21 buildings and events that help promote this
22 objective.

0062

1 Mr. DiGiacinto is neither a student nor an
2 employee of the university and has no connection to
3 the university achieving this objective, yet he
4 wants the Court to strike down a regulation
5 prohibiting him from bringing a gun into the
6 Fenwick library where not only large numbers of
7 university students congregate, but minor children
8 frequent as well.

9 The library is for students and
10 professors, not for general members of the public.
11 Just like the university's recreational facilities
12 that are closed to the members of the public, the
13 university can certainly close the library tomorrow
14 and other buildings to people like Mr. DiGiacinto
15 who are not students or not employees.

16 The privilege, not the right, the
17 university has extended to the general public who
18 are not connected with the university should not be
19 a catalyst to curb the university's ability to make
20 regulations affecting campus safety for its
21 students and employees. Now, there's no question
22 that citizens of this Commonwealth can openly carry

0063

1 their firearms; however, like most constitutional
2 rights, the state can impose limited restrictions
3 on such rights.

4 In this case the university has narrowly
5 crafted a regulation that forbids Mr. DiGiacinto

6 from entering into discreet campus buildings and
7 discreet university events. Mr. DiGiacinto is free
8 to traverse the campus grounds with his firearm
9 openly. Given these parameters, I think the
10 regulation does not infringe on Mr. DiGiacinto's
11 second amendment rights. And that's all I have,
12 Your Honor.

13 THE COURT: Thank you. Sir, I have been
14 through these briefs a number of times. I did not
15 see a citation -- I believe it's Ellinger that you
16 cited for the proposition.

17 MR. DiGIACINTO: Yeah. That's in -- it's
18 the part on Count -- Count II. Let me see in my
19 brief. I have that case here anyway.

20 THE COURT: That would help me if you have
21 a copy of it.

22 MR. DiGIACINTO: Yes. I have a copy of

0064
1 the case.

2 THE COURT: I tried to look at most of the
3 cases, but I did not see that one.

4 MR. DiGIACINTO: It's highlighted. It's
5 part of they must have constitutional authority --
6 or let me see.

7 THE COURT: Thank you. That was an
8 interesting point you raised and I wanted to make
9 sure I read this case. What I am going to do in
10 this matter is there are a lot of things to look at
11 and even two readings of these two briefs is not
12 sufficient. When I say two briefs, should I say
13 six briefs. And I would like to look it over again
14 before I make a final ruling.

15 Could I set a time for you all to come in?
16 I will just give you an oral ruling. It will
17 probably take me less than 15 minutes to give you a
18 ruling. Would it be possible if I were to ask you
19 to come in at 8:30 on July 31st? That's a week
20 from Friday.

21 MR. DiGIACINTO: That's fine with me, Your
22 Honor.

0065
1 THE COURT: Mr. Drummey, would that work
2 for your schedule?

3 MR. DRUMMEY: Your Honor, I am having
4 rotator cuff surgery on the 29th and I can't drive
5 for a week afterwards.

6 THE COURT: Okay.

7 MR. DRUMMEY: So that might make it a

8 little difficult. Is there anything later on?

9 THE COURT: I really don't want to delay
10 it too far.

11 MR. DRUMMEY: Or --

12 THE COURT: How long do you feel your
13 recovery is going to be?

14 MR. DRUMMEY: It's going to be two days
15 before that. I guess what I can do is possibly get
16 -- I think I can secure a ride. That's all I need.
17 They just didn't want me to drive. I just have to
18 keep my arm immobile, if you don't mind seeing me
19 in a half straightjacket.

20 THE COURT: Well, I probably shouldn't
21 state it on the record, but an attorney in a
22 straightjacket doesn't bother me at all. If you

0066

1 can do that -- if it turns out physically you are
2 unable to come, if you could please let us know and
3 we can shift it.

4 MR. DRUMMEY: I'm sure it will be fine.
5 It's just the transportation. I'm sure I can get a
6 ride.

7 THE COURT: Great. Let's go ahead and put
8 it on the 31st at 8:30 for me to give you a ruling.
9 And as I say, it probably won't take very long at
10 all, but I want to cover all the issues that have
11 been raised. We have covered a lot of ground
12 today. Thank you very much. We will stand in
13 recess.

14 (Whereupon, at 11:02 a.m., the
15 trial was concluded.)

16 * * * * *

17

18

19

20

21

22

0067

1 CERTIFICATE OF NOTARY PUBLIC

2 I, JOONY LOMENZO, the officer before whom the
3 foregoing trial was taken, do hereby certify that
4 the testimony appearing in the foregoing trial was
5 taken by me in stenotypy and thereafter reduced to
6 typewriting by me; that said transcription is a
7 true record of the proceedings; that I am neither
8 counsel for, related to, nor employed by any of the
9 parties to the action in which this was taken; and,

10 further, that I am not a relative or employee of
11 any counsel or attorney employed by the parties
12 hereto, nor financially or otherwise interested in
13 the outcome of this action.

14
15
16
17
18
19

JOONY LOMENZO
Notary Public in and for the
Commonwealth of Virginia

20 My commission expires:
21 March 31, 2012
22 Notary Commission No.: 7192928