Is There a Second Amendment Right to Possess Firearms on a College Campus?

DiGiacinto v. Rector *and Visitors of George Mason University, 704 S.E.2d 365 (Va. 2011)*

In this appeal, we consider whether 8 VAC § 35-60-20, a George Mason University regulation governing the possession of weapons on its campus, violates the Constitution of Virginia or the United States Constitution. Possession or carrying of any weapon by any person, except a police officer, is prohibited on university property in academic buildings, administrative office buildings, student residence buildings, dining facilities, or while attending sporting, entertainment or educational events. Entry upon the aforementioned university property in violation of this prohibition is expressly forbidden. 8 VAC § 35-60-20.

DiGiacinto is not a student or employee of GMU, but he visits and utilizes the university's resources, including its libraries. He desires to exercise his right to carry a firearm not only onto the GMU campus but also into the buildings and at the events. DiGiacinto argued in his complaint that 8 VAC § 35-60-20 violates his constitutional right to carry a firearm, that GMU lacks statutory authority to regulate firearms, and that the regulation conflicts with state law. . . . Describing 8 VAC § 35-60-20 as "effectually a total ban" on the right to bear arms on GMU's campus . . . [DiGiacinto argues that it] violates the historic understanding of the right to bear arms.

Like the United States Constitution, the Constitution of Virginia also protects the right to bear arms. . . . The Virginia General Assembly incorporated the specific language of the Second Amendment—"the right of the people to keep and bear arms shall not be infringed"—into the existing framework of Article I, § 13 of the Constitution of Virginia. As a result, the language in Article I, § 13 concerning the right to bear arms is "substantially identical to the rights founded in the Second Amendment."

We hold that the protection of the right to bear arms expressed in Article I, § 13 of the Constitution of Virginia is co-extensive with the rights provided by the Second Amendment of the United States Constitution, concerning all issues in the instant case. Thus, for the purposes of this opinion, we analyze DiGiacinto's state constitutional rights and his federal constitutional rights concurrently.

The Supreme Court of the United States has held that the Second Amendment protects the right to carry and possess handguns in the home for self-defense. . . . In *McDonald*, the Court further held that the Second Amendment applies to the states by way of the Fourteenth Amendment.

The Supreme Court clearly stated in *Heller*, and a plurality of the Court reiterated in *McDonald*, that the right to carry a firearm is not unlimited. In *Heller*, the Supreme Court specifically recognized that:

> Nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.

The Supreme Court further explained its assertion by noting, "We identify these presumptively lawful regulatory measures only as examples; our list does not purport to be exhaustive."

Neither *Heller* nor *McDonald* casts doubt on laws or regulations restricting the carrying of firearms in sensitive places, such as schools and government buildings. Indeed, such restrictions are presumptively legal.

GMU has 30,000 students enrolled ranging from age 16 to senior citizens, and over 350 members of the incoming freshman class would be under the age of 18. Also approximately 50,000 elementary and high school students attend summer camps at GMU, and

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