

<input type="checkbox"/> Small Claims <input type="checkbox"/> County Court <input checked="" type="checkbox"/> District Court <input type="checkbox"/> Probate Court <input type="checkbox"/> Juvenile Court <input type="checkbox"/> Water Court El Paso County, State of Colorado Court Address: P.O. Box 2980 270 S. Tejon St. Colorado Springs, CO 80903-2203 Phone Number: (719)448-7650	<b>FILED Document</b> <b>CO El Paso County District Court 4th JD</b> <b>Filing Date: Apr 29 2009 3:40PM MDT</b> <b>Filing ID: 24942928</b> <b>Review Clerk: Cheryl A Laszar</b>
Plaintiff(s):  STUDENTS FOR CONCEALED CARRY ON CAMPUS, LLC, a Texas limited liability company; MARTHA ALTMAN; ERIC MOTE; and JOHN DAVIS,  vs.  Defendant(s):  THE REGENTS OF THE UNIVERSITY OF COLORADO, <i>et al.</i>	<p style="text-align: center;">▲ COURT USE ONLY ▲</p> <hr/> Case Number:  2008CV6492  Div.:16 Ctrm: S370
<b>ORDER GRANTING MOTION TO DISMISS</b>	

The Defense Motion to Dismiss was filed on January 30, 2009. The plaintiffs responded on February 17, 2009. A reply was filed on March 11, 2009. Although oral argument was requested by the plaintiffs, the Court is of the opinion that argument is unnecessary and would not be helpful.

**(I) THE CLAIM**

The complaint in this matter was filed on December 11, 2008 by various individuals and Students for Concealed Carry on Campus, LLC. (The plaintiffs will be referred to jointly herein as "Students") against the Regents of the University of Colorado ("Regents") including the individual Regents who have been named in their official capacity.

By its plain language, the suit seeks enforcement of the Colorado Concealed Carry Act ("CCA") which creates uniform statewide standards regarding the carrying of concealed handguns. Students also request enforcement of the right to keep and bear arms provided by the Colorado Constitution. Specifically, the Students allege that adults trained and licensed to carry concealed handguns are authorized by Colorado law to carry in all areas of the state, except as specifically restricted by the statute, and further, the statute expressly prohibits local regulations to the contrary. Students allege that Regents Policy 14-I ("The Weapons Control Policy") prohibiting the carrying of firearms on campus by all but certified law enforcement personnel, violates the Colorado Concealed Carry Law, as well as the right to bear arms as provided in the Colorado Constitution.

## **(II) THE MOTION**

The Motion to Dismiss is brought under C.R.C.P. 12(b)(5). For purposes of the motion, the Court has considered only one attachment – *Regent Policy 14-I* (Exhibit A to the motion). This policy was incorporated by reference in the Students' complaint, is a material part of the complaint, but was not attached. The policy was attached by Regents to their motion. As such, the Court may consider the document without converting the motion into one of summary judgment. *See Yadon v. Lowry*, 126 P.3d 332, 335-36 (Colo. App. 2005). Further, to the extent an Attorney General opinion has been attached and referenced, the Court has engaged in its own independent analysis in resolving this issue. *See Colorado Common Cause v. Meyer*, 758 P.2d 153, 159 (Colo. 1988). The Court has not considered the remaining attachments submitted by the parties.

The Court recognizes that motions to dismiss for failure to state a claim are disfavored and should be denied unless it is clear beyond doubt that the plaintiff would not be entitled to any relief. *Davidson v. Dill*, 503 P.2d 157, 162 (Colo. 1972). To that end, the Court has been vigilant in viewing all of the allegations in the complaint in the light most favorable to the plaintiff. *Public Service Co. of Colorado v. Van Wyk*, 27 P.3d 377, 386 (Colo. 2001).

### **(III) SENATE BILL 03-24 (THE CONCEALED PERMIT STATUTE) DOES NOT PREEMPT OR PROHIBIT THE BOARD OF REGENTS FROM ADOPTING A POLICY (REGENT POLICY 14-I) WHICH PROHIBITS MOST FIREARMS ON UNIVERSITY PROPERTY**

A number of state institutions of higher education are created and governed by a Board of Regents pursuant to the Colorado Constitution. *Colo. Const. Article VIII, Section 3, Colo. Const. Article IX, Section 12.*

The Colorado Supreme Court has recognized that the Regents of the University of Colorado are an agency of the state for the government of the university, *In re: Macky's Estate*, 102 P.1073, 1081 (Colo. 1909) and holds the discretion of private individuals with respect to private schools or colleges. *People v. Regents of the University of Colorado*, 49 P.286, 287-88 (Colo. 1897). To that end, Colorado statutes recognize that the Regents may "promulgate rules and regulations for the safety and welfare of students, employees and property [and] may promulgate rules and regulations necessary for the governance of the respective institutions". *C.R.S. Section 23-5-106(1).*

The express authority of the Regents emanates from the Colorado Constitution which provides for "the general supervision of their respective institutions and exclusive control and direction of all funds and appropriations to their respective institutions, *unless otherwise provided by law*" (*emphasis added*). *Colo. Const. Article VIII, Section 5.*

To the end of promulgating a rule for the safety and welfare of the persons and property at Colorado institutions of higher learning, the Regents enacted a Weapons Control Policy in 1994 known as Regent Policy 14-I (Exhibit A to motion). In enacting the policy, the Regents first determined that "the possession of firearms"..."within any

University of Colorado campus...is inconsistent with the academic mission of the university and, in fact, seriously undermines it". The Regents also determined that the presence of firearms and other weapons "threatens the tranquility of the educational environment and contributes in an offensive manner to an unacceptable climate of violence". (Exhibit A to motion).

Based on the above findings, the Regents resolved that (with certain law enforcement exceptions) "the possession of firearms and other dangerous weapons on or within any University of Colorado campus...is prohibited."

The Court would note at the outset that reasonable minds could certainly differ with these conclusions of the Regents. In that regard, the Court and any right-thinking person cannot be insensitive to the logical argument that a well-placed concealed firearm located amongst the general student or faculty population might well have averted some or all of the loss of life tragically seen during the renowned killing sprees at some of the country's educational institutions.

The consideration of that argument, is entirely proper for a legislative body or the Board of Regents. It is not, however, a policy debate in which a Court should engage. This Court, instead, must read and interpret the Constitution, the statutes and the case law in order to answer the questions before it. The wisdom or desirability of legislative acts is within the unique province of the legislative body. *Kallenberger v. Buchanan*, 649 P.2d 314, 318 (Colo. 1982).

The plaintiffs maintain in their response that they have stated a claim for relief because the Colorado Concealed Carry Act ("CCA") is a comprehensive legislation that creates statewide standards and manifests a clear intent to include a local governmental and corporate body such as the Regents.

The operative language of the CCA which students rely is C.R.S. 18-12-214 (1)(a):

A permit to carry a concealed handgun authorizes the permittee to carry a concealed handgun in all areas of the state, except as specifically limited in this section... A *local* government does not have authority to adopt or enforce an ordinance or resolution that would conflict with any provision of [the CCA] (*emphasis added*).

Students point to the legal enabling authority for the Regents found in the Colorado Constitution and argue that such legislation, when read in conjunction with the CCA, requires the conclusion that the Regents' policy is in effect a "local government" action which would be subordinate to the statewide policy found in the CCA. To that end, students point to the constitutional enabling legislation for the Regents which limits the Regents' authority as "otherwise provided by law". *Colo. Const. Article VIII, Section 5(2)*.

The Court must respectfully disagree with the Students' argument on this point. Although the CCA does not define "a local government", it is apparent from the case law that the courts have not treated the Regents as a "local government", but rather, a statewide authority with its own legislative powers over distinct geographical areas. *Hartman v. Regents of the University of Colorado*, 22 P.3d 524, 527-29 (Colo. Appl. 2000). *Rojek v. Topolnicki*, 865 F.2d 1154, 1158 (10<sup>th</sup> Cir. 1989). In fact, the

Colorado Supreme Court has stated that the Colorado Constitution "grants broad discretion to the Regents as a governing board" and will allow other state legislation to supplant the Regents authority "only when a legislative enactment expressly so provides". *Associated Standards of the University of Colorado v. Regents of the University of Colorado*, 543 P.2d 59, 61 (Colo. 1975). As such, broad statewide legislation such as the Open Meetings Law and the Open Records Act have been specifically determined by our Supreme Court as not superseding the authority of the Regents, *Associated Students at 61, Uberoi v. University of Colorado*, 686 P.2d 785 (Colo. 1984). In this Court's view, it is incidental to the current analysis, whether the legislature, in an attempt to respond to the Supreme Court's rulings, later amended these acts to specifically include the Regents. If anything, by the time the CCA was later passed, the legislature was on fair notice as to what kind of specific language would have to be placed in the Concealed Carry Act if one of the goals was to ensure that the Regents were to be bound by the CCA. The Court has also reviewed the case of *Colorado Civil Rights Comm'n. ex. rel. Ramos v. Regents of the University of Colorado*, 759 P.2d 726 (Colo. 1988) cited by Students. The *Ramos* case dealt with the Colorado Civil Rights Act and specifically covered any employer in the State of Colorado. The Civil Rights Act also carefully defined "employer" in such a way that it was apparent it was intended to cover all persons, entities or "body corporates" acting as an employer in the state.

While admittedly reasonable minds may differ as to the precedential effect of *Ramos*, the fact remains that the preemption provision in the CCA is by its terms rather narrowly limited to "local governments". Accordingly, even if *Ramos* was intended by the Supreme Court to mark a shift in the analysis of the Regents' authority, the matter before the Court today is highly distinguishable due to the specific limiting language of the CCA.

#### **(IV) THE COLORADO CONSTITUTION DOES NOT GRANT A RIGHT TO CARRY A CONCEALED WEAPON ON UNIVERSITY'S CAMPUS**

Students also argue that the Regents' weapons policy violates the Colorado Constitution. The cited provision involves "The Right to Bear Arms" as found at *Colo. Const. Article II, Section B*, which provides:

The right of no person to keep and bear arms in defense of his home, person and property, or in aid of the civil power when thereto legally summoned, shall be called in question, *but nothing herein contained shall be construed to justify the practice of carrying concealed weapons (emphasis added)*.

It is clear to the Court that the plain language of this constitutional provision specifically excludes the very right Students are claiming as support for their argument. Even assuming that the above constitutional provision establishes a further "right to self-defense", the Court has been provided no authority establishing that this is a fundamental right outside of the criminal context. Rather, in the context of the authority of the Regents' to promulgate rules and regulations "for the safety and welfare of the students, employees and property", the Court is duty-bound to provide the Regents a strong presumption of constitutionality. Moreover, the Colorado Supreme Court, has in fact, made efforts to avoid finding that the above constitutional provision creates a "fundamental right" to bear arms. *See Robertson v. City & County of Denver*, 874 P.2d 325, 330 (Colo. 1994). Instead, according to the Court, what right

there is to bear arms is not absolute, and can instead be highly restricted by the state's valid exercise of its police power. *People v. Garcia*, 595 P.2d 228 (1979).

Consequently the "right to bear arms" is not subject to strict constitutional scrutiny, but rather what is known as the "rational basis test" enumerated by the U.S. Supreme Court, *Trinen v. City and County of Denver*, 53 P.3d 754, 757 (Colo. App. 2002). There have been a multitude of cases in which the Colorado courts have upheld numerous statutes that restrict the possession of firearms.

In this Court's view, the Regents' Weapon Control Policy does easily pass the "rational basis test". To be declared invalid, the Court would have to affirmatively find that there exists no reasonably conceivable set of facts to establish a rational basis between the statute and a legitimate governmental purpose. *Pace Membership v. Axelson*, 935 P.2d 504, 507 (Colo. 1997).

As stated previously in this opinion, it is not within the province of this Court to supplement its beliefs for that of the Regents or the legislature. While minds can certainly differ as to whether the Regents' determination that possessing firearms on university campuses "seriously undermines" the academic mission or "threatens the tranquility of the educational environment" or "contributes in an offensive manner to an unacceptable climate of violence", the fact remains that reasonable people can certainly reach this conclusion. As the Regents have argued, "it takes no stretch of the imagination to believe that students on a college campus could use firearms in an unsafe manner or in a way that could threaten other students" (motion at page 20).

As the declaration of intent expressed by the Regents reasonably supports the passage of the Weapons Control Policy, it is not for the Court to engage in questioning the wisdom and effectiveness of the prohibition in light of said policy. *Scholz v. Metropolitan Pathologists, P.C.*, 851 P.2d 901, 906 (Colo. 1993).

#### **(V) COURT'S CONCLUSION**

The Regents acted lawfully and in accordance with their constitutional authority when they prohibited firearms on University of Colorado campuses. Accordingly, there is no basis upon which the Students' claims state a violation of Colorado law.

The Motion to Dismiss is granted.

DONE THIS 30<sup>TH</sup> DAY OF APRIL, 2009.

BY THE COURT:



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G. DAVID MILLER  
DISTRICT COURT JUDGE