



LITIGATION BACKGROUNDER

Case: *Students for Concealed Carry on Campus v. The Regents of the University of Colorado*, District Court, El Paso County, Colorado.

Issue: The University of Colorado's ban on licensed concealed carry denies the right of self-defense guaranteed by Colorado's Concealed Carry Act and the Colorado Constitution.

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In a Nutshell

In Colorado, the right of self-defense is guaranteed by state law and the Colorado Constitution. To help protect that right and ensure safety, in 2003 the legislature created a universal program to license concealed carry of handguns.¹

Since 2003, nearly 30,000 Coloradans have received permits to carry concealed handguns virtually everywhere—including university campuses—with some clear and narrow exceptions.² Before receiving a permit, applicants must undergo an extensive background check confirming that they have no history of substance abuse or criminal activity, are not subject to a protection order, and have demonstrated competency with a handgun. They must be over the age of 21 and must carry their firearms completely out

¹ Colorado Revised Statutes §§ 18-12-201 to -216 (Concealed Carry Act).

² Colo. Rev. Stat. § 18-12-214.

of sight. If the local Sheriff feels a permit holder would be dangerous, he can deny or cancel a permit.³

By most accounts the permit system, and others like it in 40 states, has been a success at limiting bureaucracy, ensuring fairness, and reducing crime.⁴ Statistics show that fewer than 1% of permits have ever been revoked in Colorado.⁵

In spite of Colorado's successful concealed handgun permit system, the University of Colorado (CU) has ignored the legislature's background check and permit requirements. Instead, CU bars licensed adults from carrying on campus.⁶

Shortly after the enactment of the 2003 reforms, the CU Regents sought then-Attorney General Ken Salazar's opinion as to whether they could continue to enforce their ban on licensed concealed carry. Attorney General Salazar was of the opinion that CU should be allowed to enforce its ban.⁷

Anti-gun activists argue that CU's ban on licensed concealed carry keeps guns out of the hands of young students and protects the tranquility of campus life.⁸ But the experience of Colorado State University (CSU) proves those arguments wrong. CSU has not interfered with concealed handgun permit holders' right to carry on campus, yet none

³ Colo. Rev. Stat. § 18-12-203.

⁴ David Kopel, "The Untold Triumph of Concealed-Carry Permits," Policy Review, July-Aug. 1996, p. 9

(available at <http://www.hoover.org/publications/policyreview/3574822.html>).

⁵ Report to the Colorado General Assembly, Concealed Weapon Permits Issued by Colorado Sheriffs in 2006

(available at <http://www.rmgo.org/faq/CCW%20Permits%20by%20county.pdf>).

⁶ Regents Policies, 14-I (March 1994)

(available at <https://www.cu.edu/regents/Policies/Policy14I.htm>).

⁷ Op. Atty. Gen., No. 03-3 (June 17, 2003)

(available at <http://www.ago.state.co.us/pr/061703pr.pdf>)

⁸ "Why our Campuses are NOT Safer without Concealed Handguns: Rebutting the Rhetoric of Students for Gun Free Schools," p. 10-11

(available at http://www.concealedcampus.org/sccc_package.pdf).

of the “wild-west” scenarios envisioned by concealed carry opponents has come to pass at CSU—or anywhere else in Colorado.⁹ Concealed carry on campus has a perfect safety record in Utah as well, where the Utah Supreme Court struck down campus bans on licensed concealed carry in 2006.¹⁰

In light of the mass shootings that have plagued American universities in the past 30 years¹¹ and the dozens of violent assaults that occur on the campuses of the University of Colorado,¹² CU’s ban on licensed concealed carry seems tragically misguided to concealed carry permit holders. Not surprisingly, permit holders’ wish to exercise their right to carry on campus to ensure their personal safety. They have earned that right, the Colorado General Assembly has protected it through legislation, and CU may not deny it to them.

On December 11, 2008, Mountain States Legal Foundation (MSLF) filed suit against the University of Colorado. The suit seeks to protect the right of self-defense guaranteed by the Concealed Carry Act and the Colorado Constitution.

⁹ Colorado State University Police Department, “Handguns on Campus” (available at <http://publicsafety.colostate.edu/WeaponsBrochure.pdf>).

¹⁰ *University of Utah v. Shurtleff*, 144 P.3d 1109 (Utah 2006).

¹¹ “Fast Facts: Major School Shootings of Past 10 Years,” Fox News, Apr. 16, 2007 (available at <http://www.foxnews.com/story/0,2933,266371,00.html>).

¹² *See, e.g.*, Auraria Campus Police Department 2007 Campus Security and Safety Report, pp. 16-17 (available at <http://www.administration.ucdenver.edu/admin/ir/reports/survey/Clery2007/Security%20Report%202007%20UCD.pdf>)

The Plaintiffs

After urging CU for over a year to repeal its ban on licensed concealed carry, two University of Colorado students and one CU alumnus came to MSLF for help. They each sought permission to exercise their right to carry on campus. Each one was denied that right. All three are licensed to carry and are members of Students for Concealed Carry on Campus, which is also a party to the suit.

Students for Concealed Carry on Campus

Students for Concealed Carry on Campus (SCCC) is a national advocacy group with over 35,000 members and over 200 members on CU's Colorado Springs, Denver, and Boulder campuses. SCCC supports the legalization of concealed carry by licensed individuals on college campuses. Visit www.concealedcampus.org for more on SCCC.

Martha Altman

Martha Altman raised her son and sent him off to college, then returned to college herself to pursue degrees in Business Management and Health Care Administration at the University of Colorado Denver. Altman knows that nearly a dozen forcible sexual assaults and almost 50 robberies and aggravated assaults were reported over the last three years on or near the Auraria campus, where CU-Denver is located.¹³ Altman is permitted to carry a concealed handgun by the Douglas County Sheriff and she carries when not on campus. As a woman, Altman feels the need to exercise her right to carry on campus to ensure her personal safety.

¹³ Auraria Campus Police Department 2007 Campus Security and Safety Report, pp. 16-17 (available at <http://www.administration.ucdenver.edu/admin/ir/reports/survey/Clery2007/Security%20Report%202007%20UCD.pdf>)

Eric Mote

Eric Mote graduated from the University of Colorado at Colorado Springs in May 2008 with a bachelor's degree in Electrical and Computer Engineering. He works as a contract engineer and volunteers with the Colorado Springs Police Department in the financial crimes division. Mote is permitted to carry a concealed handgun by the El Paso County Sheriff and he carries when not on campus. As co-founder of the SCCC Chapter at CU-Colorado Springs, he still visits campus often for meetings with SCCC members. Because CU will not allow him to carry on campus, or safely store a handgun locked in a car, even though he is not a student Mote is denied the right to carry while traveling to and from campus.

John Davis

John Davis is a senior studying Geography and Environmental Studies at CU-Colorado Springs. Davis has more than 20 years of firearms experience and is permitted to carry a concealed handgun by the El Paso County Sheriff. Before attending CU-Colorado Springs, he spent 12 years in the military, including active duty as a rifle and pistol marksmanship instructor. Davis is a co-founder of the SCCC Chapter at CU-Colorado Springs and a Sergeant in the U.S. Army Reserves.

The Law

In 2003, a state trial court struck down the City of Denver's ban on licensed concealed carry in vehicles and public parks because the ban conflicted with the Concealed Carry Act.¹⁴ The Colorado Supreme Court declined to hear an appeal of the ruling.¹⁵

As was the case with Denver's illegal ban on licensed concealed carry, CU's ban denies adults the right to choose not to be a victim. The ban violates Colorado's 2003 Concealed Carry Act and is so broad that it also violates the Colorado Constitution, which protects an individual's right to keep and bear arms for self-defense.

Statutory Claim

In 2003, the Concealed Carry Act was passed to remedy local inconsistencies regarding permits to carry concealed firearms.¹⁶ The Concealed Carry Act declares a statewide purpose, creates universal statewide standards for concealed carry permits, adopts a narrow list of exclusions where the Act does not control, and prohibits local governments from enforcing contradictory laws and policies.¹⁷

Although the Regents are authorized to provide local governance for the University of Colorado, a statute or constitutional provision can limit that authority.¹⁸ The Concealed Carry Act limits the Regents' authority because it is comprehensive legislation

¹⁴ *City and County of Denver v. State*, No. 03 CV 3809 (Colo. Dist. Ct. Nov. 5, 2004).

¹⁵ *State v. City and County of Denver*, 139 P.3d 635 (Colo. 2006).

¹⁶ Colo. Rev. Stat. §§ 18-12-201 to -216.

¹⁷ Complaint ¶¶ 25-34, *SCCC v. Regents*, ___ CV ___ (Colo. Dist. Ct. filed Dec. 11, 2008)

¹⁸ Colo. Const. art. VIII, § 5.

addressing a matter of statewide concern.¹⁹

The Regents' ban on licensed concealed carry is in direct and irreconcilable conflict with express and implied statutory prohibitions against enforcement of local rules regulating concealed carry, both on its face and as applied against Plaintiffs.

Constitutional Claim

The right to bear arms is guaranteed by article II, § 13 of the Colorado Constitution. Article II, § 13 prohibits regulations that are unreasonably broad. The Regents' gun ban is unconstitutional because it broadly denies the right to bear arms and makes no exception for self-defense.

The Regents' ban violates the Constitution by denying an entire class of law-abiding individuals—all law-abiding campus visitors—the right to possess a firearm for self-defense. Although the Regents have a legitimate interest in ensuring a safe campus, the Regents cannot advance that interest by disarming any class of people, including all law-abiding campus visitors.²⁰

The Colorado Supreme Court has ruled that even convicted felons may not be disarmed as a class when a felon's purpose in possessing arms is defense of home, person, or property.²¹ Law-abiding adult visitors to the University of Colorado campuses have at least the same right to possess firearms as convicted felons. Yet, the Regents' ban unconstitutionally bars possession of all firearms, even those safely stored in a

¹⁹ *Colorado Civil Rights Comm'n ex rel. Ramos v. Regents of the University of Colorado*, 759 P.2d 726 (Colo. 1988).

²⁰ *People v. Nakamura*, 62 P.2d 246 (Colo. 1936).

²¹ *People v. Ford*, 568 P.2d 26 (Colo. 1977).

vehicle.²² Even driving through campus with a handgun locked in a glove compartment would violate the Regents' ban.

Legal Trends

Forty states have right to carry laws similar to Colorado's²³ and state Supreme Courts across the nation are ruling that concealed carry statutes cannot be ignored by local regulators.

In Utah, licensed concealed carry has been allowed on university campuses since 2006, when the Utah Supreme Court struck down a campus ban similar to CU's.²⁴ The court ruled that state law stripped the public universities of any authority to regulate firearms, including licensed concealed carry.

In Ohio, that state's Supreme Court struck down a local ban on licensed concealed carry in parks.²⁵ The court ruled that state law created a right to carry subject to limited exceptions. Because public parks were not among those exceptions, the court struck down the local ban on licensed concealed carry.

²² *Lakewood v. Pillow*, 501 P.2d 744 (Colo. 1972) (holding unconstitutional City of Lakewood's ban on possession or use of any deadly weapon except in one's home.)

²³ NRA Report on Right-to-Carry (2008)

(available at <http://www.nraila.org/Issues/factsheets/read.aspx?ID=18>).

²⁴ *University of Utah v. Shurtleff*, 144 P.3d 1109 (Utah 2006).

²⁵ *Ohioans For Concealed Carry, Inc. v. Clyde*, 882 N.E.2d 443 (Ohio 2008).

Litigation Team

MSLF President and Chief Legal Officer William Perry Pendley will lead Mountain States Legal Foundation's litigation team, joined by Staff Attorney Jim Manley.

Founded in 1977, Mountain States Legal Foundation is a nonprofit, public-interest law firm that litigates in defense of individual liberty, the right to own and use property, limited and ethical government, and the free enterprise system. Its offices are in suburban Denver, Colorado.

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