IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

STUDENTS FOR CONCEALED CARRY FOUNDATION, INC., et al., Plaintiffs, v. THE OHIO STATE UNIVERSITY, Defendant.	Case No. 14 CV 006927 Judge Daniel T. Hogan

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MOTION TO DISMISS OF THE OHIO STATE UNIVERSITY

Pursuant to Rules 12(B)(1) and 12(B)(6) of the Ohio Rules of Civil Procedure, The Ohio State University moves the Court to dismiss this case for lack of subject matter jurisdiction and for failure to state a claim upon which relief can be granted. A memorandum in support is attached.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

Students for Concealed Carry Foundation, Inc., and Ohioans for Concealed Carry ("the Concealed Carry Groups") mount a challenge to some of The Ohio State University's policies related to firearms. Although the Complaint reveals ideological opposition to the challenged provisions, that alone does not establish that the groups have standing to challenge them, much less that they are unlawful.

The Concealed Carry Groups' claims fail on jurisdictional grounds even before the Court can reach the merits. The groups seek to sue on behalf of their members, but fail to identify a single member of either group harmed by the challenged provisions. The groups also fail to identify their claimed injury: They do not explain what activities their members plan to engage in, what enforcement actions Ohio State might take, or even that the challenged provisions bind any of their members. The Concealed Carry Groups have therefore failed to provide sufficient allegations to invoke this Court's jurisdiction.

Moreover, even if the Court had jurisdiction, the Complaint fails to state a claim.

STATEMENT OF THE CASE AND FACTS

I. Legal Background

Property owners in Ohio enjoy dominion and control over their property, "including the power . . . to admit people to the premises and exclude them from the premises." *Cooper v. Roose*, 151 Ohio St. 316, 323 (1949). In the absence of a statute to the contrary, the power to exclude others encompasses the lesser power of admitting only unarmed individuals. Consequently, for most of Ohio's history the decision to prohibit or allow firearms rested with the property owner. The Ohio General Assembly over time restricted firearm possession, use, and discharge on certain categories of property, regardless of the property owner's preference. These included both private property (for example, liquor establishments, R.C. 2923.121) and

public property (for example, courthouses, R.C. 2923.123). But for property owners outside the categories covered by legislation, the background principle remained: owner's choice.

In the last decade, two legal developments relevant to this case occurred, one related to the concealed carrying of firearms and one principally related to the open carrying of firearms.

Concealed Carry. In 2004, the General Assembly enacted a comprehensive licensing scheme governing the concealed carrying of handguns. *See* R.C. 2923.126. A person wishing to carry a concealed weapon must satisfy safety regulations and obtain a license. *Id.* Even licensed individuals may not carry concealed handguns in certain locations, including, among others, schools, courthouses, child-care centers, and—as relevant here—universities. R.C. 2923.126(B).

Open Carry. Enactment of Ohio's concealed-carry licensing scheme left in place the rule that property owners decide whether to allow open carry on their property. Meanwhile, several municipalities passed ordinances regulating firearms. *See, e.g.*, *City of Cleveland v. State*, 128 Ohio St. 3d 135, 2010-Ohio-6318 ¶ 3. To the extent the ordinances related to concealed carry, they were preempted by R.C. 2923.126(B). *See Ohioans for Concealed Carry, Inc. v. City of Clyde*, 120 Ohio St. 3d 96, 2008-Ohio-4605 ¶¶ 1, 54. But to the extent the ordinances related to open carry, they remained valid in the absence of contrary state law—at least until 2007.

In that year, R.C. 9.68 became effective. The General Assembly enacted that statute in reaction to the growing hodgepodge of local firearms ordinances. It provides, in part: "Except as specifically provided by the United States Constitution, Ohio Constitution, state law, or federal law, a person, without further license, permission, restriction, delay, or process, may own, possess, purchase, sell, transfer, transport, store, or keep any firearm." That language acts to "nullify all municipal laws" related to firearm possession. *Ohioans for Concealed Carry, Inc.*, 2008-Ohio-4605 ¶ 40.

There is no doubt that *municipal* regulation—not regulation by *state* entities—was the target of R.C. 9.68. The lead sponsor in the House of Representatives emphasized that "local firearms ordinances result[] in a complex patchwork of restrictions," and that it was "simply not reasonable" to ask law-abiding gun owners "to gain knowledge and understanding of hundreds of different ordinances while traveling from city to city in Ohio." House Session (Mar. 8, 2006), 126th Gen. Assem. (Rep. Aslanides). Likewise the lead sponsor in the Senate expressed concern that a jumble of local firearm ordinances "put[s] the law-abiding citizen carrying a firearm in some kind of conflict from one jurisdiction to the next." Senate Session (Nov. 29, 2006), 126th Gen. Assem. (Sen. Jordan). That history forms the backdrop to this dispute.

II. Current Proceedings

On July 6, 2014, the Concealed Carry Groups initiated this action raising a facial challenge to four of Ohio State's firearms policies ("the challenged provisions"):

1. Code of Student Conduct § 3335-23-04(E), prohibiting "[s]torage or possession of . . . firearms . . . unless authorized by an appropriate university official or permitted by a university policy, even if otherwise permitted by law."

2. Workplace and Family and Relationship Violence Policy § 7.05, which prohibits "[p]ossession of deadly weapons on university property" and specifies that firearms "shall not be stored in personal vehicles parked on state-owned and/or leased property."

3. Department of Recreational Sports Standard of Conduct § 4.1.1, prohibiting "[c]oncealed weapons" on campus "except by a licensed person in a locked vehicle."

4. Residence Hall Handbook Standard of Conduct § 7.2, providing that "[p]ossession and/or use of any type of firearm or other weapon is not permitted in or around University Housing," including "persons in possession of a concealed firearms permit."

Open-carry challenge. The Complaint chiefly challenges how these provisions affect the open carrying of firearms. The groups accept that state law generally prohibits even a concealed-carry licensee from carrying a concealed handgun on Ohio State property. *See* R.C. 2923.126(B)(5); Compl. ¶ 19. Accordingly, their central challenge is that R.C. 9.68(A) prohibits

Ohio State from imposing restrictions on open carry above and beyond what is required by state statutes. *See* Compl. ¶ 20.

Locked-car challenge. The Complaint also brings a secondary challenge regarding the storage of firearms in locked cars. The groups read R.C. 2923.126(B)(5) as conferring an affirmative right to store firearms in locked vehicles on university property and seek to invalidate the challenged provisions on that ground. *See id.* ¶ 19.

The Concealed Carry Groups seek declaratory and injunctive relief, striking down the challenged provisions as facially unlawful. They also request an order directing Ohio State "to immediately expunge and destroy all disciplinary records" related to the challenged provisions. And the Concealed Carry Groups seek costs and attorney fees. *See* Compl. Prayer for Relief.

ARGUMENT

I. Because the groups lack standing, the Complaint should be dismissed for lack of subject matter jurisdiction

Before an Ohio court can consider the merits of a legal claim, the party seeking relief bears the burden of establishing it has standing to sue. *Ohio Contractors Ass'n v. Bicking*, 71 Ohio St. 3d 318, 320 (1994). For two independent reasons, the Concealed Carry Groups have failed to carry their burden. First, although they attempt to bring suit on behalf of their members, they have failed to identify a member of either group who would have standing to sue in his or her own right. Second, they have not concretely alleged any injury-in-fact arising from the challenged provisions.

A. The Concealed Carry Groups lack associational standing because they have failed to identify a member of either group who has suffered or will suffer harm from the challenged provisions

The Concealed Carry Groups do not assert any injury to themselves as organizations, but rather sue on behalf of their members. The Ohio Supreme Court has held that "[g]enerally, a

litigant must assert its own rights, not the claims of third parties." *City of N. Canton v. City of Canton*, 114 Ohio St. 3d 253, 2007-Ohio-4005 ¶ 14. Ohio law recognizes a narrow exception to this prohibition on third-party standing, however, when an association sues in its representational capacity. To establish standing under this exception at the pleading stage, an association must allege that "'(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.'" *Bicking*, 71 Ohio St. 3d at 320 (quoting *Hunt v. Wash. State Apple Adver. Comm'n*, 432 U.S. 333, 343 (1977)). The Concealed Carry Groups fail on all three grounds.

No individual member with standing. The Concealed Carry Groups "have not established that any of their members have been injured by" the challenged provisions. *State ex rel. Am. Subcontractors Ass'n v. Ohio State Univ.*, 129 Ohio St. 3d 111, 2011-Ohio-2881 ¶ 16. Start with Ohioans for Concealed Carry, which comes nowhere close to alleging sufficient facts to establish standing. It does not allege that any of its members study or work at Ohio State, or are otherwise bound by the challenged policies. *See* Compl. ¶ 2. It instead claims only an ideological desire to "restore and preserve the rights of all gun owners in Ohio." *Id.* Because Ohioans for Concealed Carry has failed to allege that any of its members have been harmed or imminently will be harmed by Ohio State's actions, it lacks associational standing.

The same is true of the national group, Students for Concealed Carry Foundation, Inc. The Complaint lacks any allegation that a single member of that Idaho-based organization is a student or employee of Ohio State, or is otherwise harmed by the challenged provisions. The closest the group comes to anchoring itself to Ohio State is claiming that it has an "affiliated chapter" on campus called Buckeyes for Concealed Carry. *Id.* ¶ 1. But Buckeyes for Concealed

Carry is no longer a registered student organization at Ohio State, and has not been recognized by the university as an active student organization for over a year. *See* http://bit.ly/1A1NodF (last visited Aug. 5, 2014). Moreover, the Complaint does not allege that members of Buckeyes for Concealed Carry (when it was active) were necessarily members of the national group, Students for Concealed Carry. Students for Concealed Carry thus cannot premise its claim to standing on a now-defunct student organization with which it once had some hazy affiliation.

No germaneness. The Concealed Carry Groups also fail to establish that the interests they seek to protect are germane to their organizational purposes. This case primarily concerns *open* carry. *See* Compl. ¶ 20. Yet, to see their purposes, the Court needs to look no further than the groups' names, which invoke only the right to *concealed* carry. Importantly, not every organization advocating concealed carry necessarily advocates open carry, and vice versa. In fact, Students for Concealed Carry's website clarifies that the group "only advocates the legalization of CONCEALED carry by LICENSED individuals on COLLEGE campuses." *See* http://concealedcampus.org/faq/ (last visited Aug. 5, 2014). The organization concedes it "has no official position on," among other issues, "open carry." *Id.* Saying that open carry is relevant to the interests of an organization that takes "no official position on" that issue gives relevance a bad name.

The groups' relief requires individual participation. Finally, at least some of the Concealed Carry Groups' requested relief requires individual participation. They ask for an order directing Ohio State "to immediately expunge and destroy all disciplinary records" arising out of the challenged provisions since March 14, 2007. Compl. Prayer for Relief ¶ c. The groups fail to establish that Ohio State has imposed discipline on anyone—much less on any of their members—under the provisions. Equally important, only an individual student or

employee is injured by the improper maintenance of that person's records, and a third party cannot assert those personal rights. *See City of N. Canton*, 2007-Ohio-4005 ¶ 14. The Concealed Carry Groups have not sought class certification, nor have they explained why an order related to other individuals is needed to protect their members. As a result, the Court should at least dismiss the records-expungement count for want of individual participation.

At day's end, the Concealed Carry Groups fail all three requirements of associational standing, and the Complaint should be dismissed for lack of subject matter jurisdiction.

B. The Concealed Carry Groups also lack standing because they have alleged no concrete injury-in-fact

The Concealed Carry Groups also fail to identify a concrete injury caused by the challenged provisions. To establish standing, litigants at the pleading stage must allege "that they suffered (1) an injury that is (2) fairly traceable to the defendant's allegedly unlawful conduct, and (3) likely to be redressed by the requested relief." *Moore v. City of Middletown*, 133 Ohio St. 3d 55, 2012-Ohio-3897 ¶ 22. An injury "must be concrete and not simply abstract or suspected" in order to invoke the Court's jurisdiction. *Bicking*, 71 Ohio St. 3d at 320. The plaintiff must also have "a direct interest" in the challenged legal provision "of such a nature that his rights will be adversely affected by its enforcement." *Anderson v. Brown*, 13 Ohio St. 2d 53 syl. ¶ 1 (1968). And the injury must be "actual or imminent, not hypothetical or conjectural." *Bourke v. Carnahan*, 163 Ohio App. 3d 818, 2005-Ohio-5422 ¶ 10 (10th Dist.).

The Complaint does not satisfy these standards. Although the groups allege abstractly that they "will suffer irreparable harm," Compl. ¶ 30, they do not concretely allege the nature of the harm or that it will occur imminently. Relatedly, they do not establish that their members have a direct interest in the enforcement of the challenged provisions, principally because they do not establish that the provisions even bind their members. Nor do they allege what activities

their members wish to engage in and what enforcement actions they believe Ohio State will take as a result. With such deficient allegations, the Concealed Carry Groups have failed to establish an entitlement to judicial review.

Moreover, the Concealed Carry Groups fail to establish that they have standing for each count in the Complaint. *See Lewis v. Casey*, 518 U.S. 343, 358-59 n.6 (1996). It would be insufficient to allege only that their membership includes individuals who attend Ohio State classes *or* live in Ohio State housing *or* work at Ohio State jobs *or* use Ohio State recreational facilities. They instead need to show that their membership includes individuals bound by *each and every one* of the challenged policies. The same is true of the Concealed Carry Groups' claims for relief: Before establishing an entitlement to an order to expunge disciplinary records, for example, they must identify a member who has endured discipline. Both on the front end (injury-in-fact) and the back end (relief), the Complaint's allegations fall short.

Insisting on proper standing is not merely academic. The Concealed Carry Groups bring a facial challenge, which seeks to invalidate the challenged provisions in *all* of their applications, no matter the circumstances. In doing so, they ask the judiciary to throw out longstanding policies of one of the politically accountable branches of government. And if entertained, that challenge will affect the interests of many individuals not before the Court. Before a party triggers such consequences, it must establish it has standing to sue.

II. The Complaint should be dismissed for failure to state a claim upon which relief can be granted

Given the Concealed Carry Groups' lack of standing, that should be the end of the matter. If the Court proceeds to the merits, however, the Complaint should still be dismissed for failing to state a claim. Because they raise a facial challenge, the Concealed Carry Groups must establish that the challenged provisions are invalid in *all* circumstances. They cannot do so.

A. To prevail in their pre-enforcement facial challenge, the Concealed Carry Groups must establish that there is no set of circumstances in which the challenged provisions would be lawful

The Concealed Carry Groups do not allege that the challenged provisions are unlawful as applied to their members' particular circumstances. Instead, they bring a pre-enforcement facial challenge, seeking to wipe the challenged provisions off the books completely. *See* Compl. Prayer for Relief ¶ a. This kind of challenge is "the most difficult to bring successfully" because the plaintiff "must establish that there exists no set of circumstances" under which the defendant could enforce the challenged provisions. *Harrold v. Collier*, 107 Ohio St. 3d 44, 2005-Ohio-5334 ¶ 37. In this context, that means the Concealed Carry Groups need to show that Ohio State cannot lawfully apply the challenged provisions to *anyone*.

Many of the reasons bearing on the groups' lack of standing also show why they carry a heavy burden in bringing a facial challenge. Facial challenges "raise the risk of premature interpretation," as well as erroneous interpretation. *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 450 (2008). They also may as a practical matter resolve the rights of parties not before the Court. And the risk of erroneous or unnecessary interpretations matters because of what is at stake—the wholesale invalidation of a law. As a result, the judiciary is "*highly deferential*" to the politically accountable branches when entertaining facial challenges. *Arbino v. Johnson & Johnson*, 116 Ohio St. 3d 468, 2007-Ohio-6948 ¶ 113.

B. Although R.C. 9.68(A) displaces local-government firearm regulation, it does not affect the independent authority of state entities to control firearm possession on their property and in their activities

R.C. 9.68(A) does not diminish Ohio State's authority to control open carry on campus. First, the General Assembly meant for R.C. 9.68(A) to preempt *municipal* firearm ordinances, but not the longstanding power of *state* entities to control their property and activities. Second,

R.C. 9.68(A) allows restrictions on open carry that are "specifically provided by . . . state law," and a state statute orders Ohio State to adopt regulations ensuring safety and order on campus.

1. R.C. 9.68(A) preserves the background principle that state entities may control firearm possession on their property and in state-controlled activities

As described above, property owners enjoy the authority to control firearms on their property, in the absence of a statute to the contrary. The question then becomes: Does R.C. 9.68(A) diminish state entities' authority to control firearms on state property? The answer is no.

The text of R.C. 9.68(A) does not mention state entities or otherwise suggest that it limits state authority to regulate firearms on state property. The text and statutory structure suggest it binds only municipalities. For example, subsection (D) exempts from the statute's coverage certain "zoning ordinance[s]"—an exemption that reveals a municipal focus. The history behind R.C. 9.68(A) (as described above) also shows that the General Assembly enacted it to eliminate a growing patchwork of local firearm ordinances. Had the General Assembly meant to diminish the longstanding authority of state entities to control their property, it would have said so more clearly than the Concealed Carry Groups suggest.

Beyond that, the telltale evidence that R.C. 9.68 does not bind state entities is that state entities have continued to adopt and enforce firearm restrictions after the statute's enactment. In other words, Ohio State is hardly alone among state entities in prohibiting the open carry of firearms and storing weapons in locked vehicles. The General Assembly has not intervened to stop this practice, and in fact has legislated with the background assumption that the practice is proper. Take, for example, the Weapons Use Policy of the Ohio Department of Administrative Services, which controls a large amount of state property. That policy "prohibit[s] employees from possessing or having under their control a weapon" while on state business. Ohio DAS Policy No. 500-06. The policy emphasizes that individuals with permits "to carry a concealed

weapon in the State of Ohio are not exempt" from the prohibition. *Id.* The list of state agencies that have similar policies regulating firearms includes, among others, the Ohio Environmental Protection Agency and the Departments of Agriculture, Commerce, Job and Family Services, Natural Resources, Rehabilitation and Correction, Taxation, and Transportation.

If the Concealed Carry Groups are correct that R.C. 9.68(A) prohibits state entities from imposing firearm restrictions above and beyond what is required by state statutes, then all of these state agencies have misread R.C. 9.68(A). The efforts of all of these state agencies to impose reasonable controls on the use of firearms would be vanquished, and open carry would be the rule on nearly all state property across Ohio.

We know that was not the General Assembly's intent in large part because it has acted in a manner consistent with the principle that state entities may control firearms on their property in the absence of a contrary state statute. For instance, it recently enacted a statute allowing guns to be stored in locked vehicles in the Statehouse and Riffe Center garages. Am. Sub. H.B. No. 495 (eff. Mar. 27, 2013). That superseded a policy—not a statute—prohibiting possession in those locations. *See* Ohio DAS Policy No. 500-06. Yet if the Concealed Carry Groups are correct that R.C. 9.68(A) prohibits the ability of state entities to adopt firearm restrictions, then the old policy was unlawful, and individuals could carry firearms in those garages without further statutory authorization. The fact that the General Assembly saw the need to pass a statute superseding the old policy also supports the fact that R.C. 9.68(A) limits only local entities, not state entities.

2. The General Assembly has directed the Ohio State Board of Trustees to manage Ohio State property and activities to protect the safety of students and employees

Even if R.C. 9.68 bound more than just local governments, it still would not render Ohio State's provisions unlawful. That statute still restricts an individual's right to carry a firearm "as specifically provided by . . . state law," and the challenged Ohio State provisions are so provided.

The Legislature has directed that the Ohio State Board of Trustees "shall regulate" the university "so that law and order are maintained" and so that Ohio State "may pursue its educational objectives in an orderly manner." R.C. 3345.21. More broadly, the Legislature has delegated to Ohio State the authority to "adopt bylaws, rules, and regulations for the government of the university," R.C. 3335.08, and the power to "have general supervision of all lands, buildings, and other property belonging to the university." R.C. 3335.10. Given this statutory authorization, the challenged provisions were "specifically provided by . . . state law." R.C. 9.68(A).

Furthermore, the Concealed Carry Groups do not explain why the challenged policies *themselves* should not be considered "state law" for purposes of R.C. 9.68(A). That statute does not speak in narrow terms of "state statutes" but instead speaks in broad terms of "state law." The term "state law" generally includes "[a] body of law in a particular state consisting of the state's constitution, statutes, *regulations*, and common law." Black's Law Dictionary (9th ed. 2009) (emphasis added). The challenged provisions are valid regulations, adopted consistent with statutes granting Ohio State the authority to govern university property and activities. *See, e.g.*, R.C. 3335.08, 3335.10, 3345.21. Indeed, the Code of Student Conduct has the same authority as rules codified in the Ohio Administrative Code. *See* Legislative Service Commission, Overview of Administrative Rule-Making Procedure in Ohio at 13 (July 30, 2008), *available at* http://www.lsc.state.oh.us/membersonly/127rulemaking.pdf. Accordingly, as far as Ohio State property and activities are concerned, the challenged policies meet the definition of "state law."

C. The challenged provisions are reasonable conditions on receiving a government benefit

Another reason the challenged provisions are lawful is that they are conditions on receiving a government benefit. The government is limited in its ability to require parties to

waive rights as a condition of benefits, but not all such conditions are improper. Instead, courts have struck down conditions on government benefits when they are coercive and when they are unrelated to the benefit. For a coercion example: The U.S. Supreme Court has struck down as coercive a requirement that certain veterans take a loyalty oath as a condition of receiving a property-tax benefit. *Speiser v. Randall*, 357 U.S. 513, 518-19 (1958). For an unrelatedness example: The Supreme Court has struck down as unrelated a condition on a building permit that required the property owner to allow public access across the property. *Nollan v. Cal. Coastal Comm'n*, 483 U.S. 825, 837 (1987). Conditions that are neither coercive nor unrelated survive judicial scrutiny.

So far as bears on this case, the challenged provisions are reasonable conditions on receiving a government benefit. First, they are not coercive. They do not place a severe burden on anyone's rights to possess a firearm or to seek higher education. Second, there is a close relationship between the benefit offered and the condition imposed. The challenged provisions relate only to firearms on Ohio State property and in Ohio State activities. Ohio State does not limit open carry in contexts unrelated to the university. What is more, Ohio State may reasonably see a relationship between a safe and productive educational environment and a prohibition on carrying firearms. That reasonable belief seems to be shared by the General Assembly, which prohibits the concealed carrying of firearms in school safety zones, R.C. 2923.126(B)(2), and Congress, which prohibits the knowing possession of certain firearms in school zones, 18 U.S.C. § 922(q)(2)(A). In short, this restriction—which is non-coercive and relates to Ohio State's educational objectives—is a reasonable one.

One last thing: The Complaint mentions the Ohio Constitution in passing, but does not seem to seek relief on constitutional grounds. The groups premise this Court's jurisdiction on

R.C. 9.68, Compl. ¶ 4, and their primary allegation is that the challenged provisions "violate ORC § 9.68," not that they violate any constitutional provision. *Id.* ¶ 7. The Concealed Carry Groups also base their request for attorney fees on R.C. 9.68(A). *Id.* ¶ 32. The Complaint therefore does not state a constitutional claim upon which relief could be granted.

D. The Complaint fails to state a claim that the prohibition on storing firearms in personal vehicles is invalid in all circumstances

Finally, the Concealed Carry Groups complain that Ohio State prohibits storing firearms in locked vehicles on campus. The target of the challenge is not altogether clear. The Recreational Sports provision expressly *exempts* from its prohibition firearm possession by "a licensed person in a locked vehicle." Meanwhile the Workplace and Family and Relationship Violence Policy expressly mentions that firearms "shall not be stored in personal vehicles parked on state-owned and/or leased property." And the other two challenged provisions do not mention vehicles by name. So the Complaint does not make clear the scope of this challenge.

No matter. In this pre-enforcement facial challenge, the Concealed Carry Groups "must establish that there exists no set of circumstances" under which the challenged provisions could be enforced. *Harrold*, 2005-Ohio-5334 ¶ 37. But the provisions can be enforced in at least three settings. First, although the groups read a statute as allowing individuals *with* concealed-carry licenses to have handguns in locked vehicles, *see* Compl. ¶ 19 (citing R.C. 2923.126(B)(5)), the provisions could still be enforced against individuals *without* licenses. Second, even if concealed-carry licenses grant the right to carry handguns in locked cars, the provisions could still be enforced against individuals carrying other types of firearms. Third, the provisions could be enforced against concealed-carry licensees without their licenses and personal identifications in their possession. *See* R.C. 2923.126(A). Given that Ohio State could lawfully apply the challenged policies at least in these circumstances, this facial challenge fails.

Beyond the problems with the facial nature of this challenge, the Concealed Carry Groups misread the text of R.C. 2923.126. A concealed-carry license generally "does not authorize the licensee to carry a concealed handgun" on the premises of "any public or private college, university, or other institution of higher education." R.C. 2923.126(B)(5). This prohibition in subsection (B)(5) is lifted if "the handgun is in a locked motor vehicle or the licensee is in the immediate process of placing the handgun in a locked motor vehicle." *Id.* The groups read the "unless" clause as conferring an affirmative right to store firearms in locked vehicles on university property. But the better reading of that language is that it simply lifts the categorical ban on possessing a handgun on campus. By lifting the ban, it resets to the default rule of property owner's choice. It does not grant a right to store a handgun in a locked motor vehicle on campus.

Even if subsection (B)(5) grants an affirmative right to carry a handgun in a locked motor vehicle, that right would be exceedingly narrow. The concealed-carry statute allows licensees to carry handguns only if "the licensee is in *actual possession* of a concealed handgun." R.C. 2923.126(A) (emphasis added). That means, at most, the concealed-carry license would grant a right to carry a handgun on campus in a locked motor vehicle when the licensee was in actual possession of the firearm. The narrowness of this right reinforces why this facial challenge cannot succeed. At bottom, the fact that concealed-carry licensees may have the right to carry handguns at Ohio State in locked motor vehicles "under some plausible set of circumstances" will not render the challenged provisions "wholly invalid." *Harrold*, 2005-Ohio-5334 ¶ 37.

CONCLUSION

For these reasons, the Court should dismiss the Complaint.

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Motion to Dismiss and Memorandum of Support of The Ohio State University were served through the Court's electronic filing system this 6th day of August, 2014, upon the following counsel:

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