

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
CIVIL DIVISION

**Students for Concealed Carry
Foundation, Inc.**
c/o Barney DeBrosse, LLC
503 South Front Street, Suite 240B
Columbus, Ohio 43215

&

Ohioans for Concealed Carry
c/o Barney DeBrosse, LLC
503 South Front Street, Suite 240B
Columbus, Ohio 43215

Plaintiffs,

&

Ryan A. Guenther
c/o Barney DeBrosse LLC
503 South High Street, Suite 240B
Columbus, Ohio 43215

New Party Plaintiff,

vs.

The Ohio State University
205 Bricker Hall
190 North Oval Mall
Columbus, Ohio 43210

Defendant.

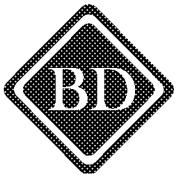
CASE NO. 14CV6927

JUDGE HOGAN

AMENDED COMPLAINT
FOR DECLARATORY
JUDGMENT AND
INJUNCTIVE RELIEF

AMENDED COMPLAINT

This Amendment is made as of right to Plaintiffs' Complaint for Declaratory Judgment & Injunctive Relief pursuant to Civ. R. 15(A), as it is being filed within twenty-eight (28) days after service of Defendant's Motion to Dismiss pursuant to Civ. R. 12(B), which was filed on August 6, 2014.



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Now come Plaintiffs Students for Concealed Carry Foundation, Inc., Ohioans for Concealed Carry, and Ryan A. Guenther (hereinafter "Plaintiffs"), by and through undersigned counsel, and complain as follows:

INTRODUCTION

This is an action whereby Plaintiffs seek to enforce important civil rights on behalf of the citizens of Ohio against Defendant The Ohio State University (hereinafter "OSU"), and seek a declaratory judgment, declaring certain OSU rules, regulations and policies banning firearms as unlawful. Plaintiffs further seek a permanent injunction barring Defendant OSU from unlawfully applying its rules, regulations and policies to students, employees and visitors, and Plaintiffs seek their attorney fees.

PARTIES

1. Plaintiff Students for Concealed Carry Foundation, Inc. ("Students for Concealed Carry"), is an Idaho not for profit corporation authorized to do business in Ohio, and which has an affiliated group ("Buckeyes for Concealed Carry") that is located at Defendant The Ohio State University, located at the main campus in Columbus, Franklin County, Ohio. The OSU group consists of students, faculty, staff, alumni, parents, as well as fans and others focused on restoring Second Amendment Rights on Ohio's college campuses.
2. Plaintiff Ohioans for Concealed Carry ("OFCC") is an Ohio not for profit corporation that was formed in 1999 as a grassroots political activist organization. When founded, the primary goal of OFCC was getting concealed handgun carry authorized by law in Ohio. With that accomplished, OFCC's mission became to refine the concealed carry law and to restore and preserve the rights of all gun



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owners in Ohio. Upon information and belief, OFCC has members who are students, faculty, and/or staff at Defendant OSU.

- 3. Plaintiff Ryan A. Guenther is an individual residing in Franklin County, Ohio who is a current lawful firearms owner, Ohio concealed handgun licensee, member of Ohioans for Concealed Carry, member of Buckeyes for Concealed Carry and member of Students for Concealed Carry, and an undergraduate student at Defendant The Ohio State University.
- 4. Defendant The Ohio State University is a higher education institution created by the Ohio General Assembly, which is an instrumentality of the State of Ohio, organized and existing under the laws of Ohio, including Ohio Revised Code (ORC) Chapter 3335, with its principal place of business in Columbus, Franklin County, Ohio.

JURISDICTION AND VENUE

- 5. This Court has proper subject matter jurisdiction pursuant to ORC § 9.68 and ORC Chapter 2721. ORC § 9.68 states, in pertinent part:

(A) The individual right to keep and bear arms, being a fundamental individual right that predates the United States Constitution and Ohio Constitution, and being a constitutionally protected right in every part of Ohio, the general assembly finds the need to provide uniform laws throughout the state regulating the ownership, possession, purchase, other acquisition, transport, storage, carrying, sale, or other transfer of firearms, their components, and their ammunition. **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, part of a firearm, its components, and its ammunition.**

(B) In addition to any other relief provided, the court shall award costs and reasonable attorney fees to any person, group, or entity that prevails in a challenge to an ordinance, rule, or regulation as being in conflict with this section.



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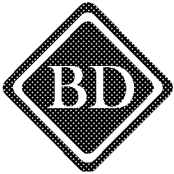
(C) As used in this section: (1) The possession, transporting, or carrying of firearms, their components, or their ammunition include, but are not limited to, the **possession, transporting, or carrying**, openly or concealed on a person's person or concealed ready at hand, **of firearms, their components, or their ammunition**.

*** (emphasis added)

6. Personal jurisdiction is proper over Defendant pursuant to ORC § 2307.382, because the claims herein relate to business transacted by Defendant in Ohio and due to Defendant having an interest in, using, or possessing real property in Ohio.
7. Venue is proper in this Court pursuant to Civ. R. 3(B)(2) because Franklin County is the principal place of business of the named Defendant, under Civ. R. 3(B)(3) because the Defendant conducted activity in Franklin County which gives rise to this action and under Civ. R. 3(B)(6), because the claim(s) for relief arose at least in part in Franklin County, Ohio.

ALLEGATIONS COMMON TO ALL COUNTS

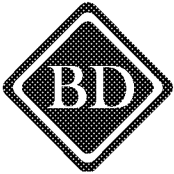
8. Upon information and belief, Defendant OSU has enacted a number of rules and/or regulations that violate ORC § 9.68, including, but not limited to the following described in the next four succeeding paragraphs.
9. **First**, within the Code of Student Conduct, codified at *Ohio Administrative Code* (OAC) Rule 3335-23-04 Prohibited conduct, at subsection D “**Dangerous weapons or devices** Storage or possession of dangerous weapons, devices, or substances including, but not limited to, firearms, ammunition, or fireworks, unless authorized by an appropriate university official or permitted by a university policy, even if otherwise permitted by law. Use or misuse of weapons, devices, or



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substances in a manner that causes or threatens serious harm to the safety or security of others.”

10. **Second**, *OSU Human Resources Policy No. 7.05*, Workplace Violence, which states, in pertinent part: “The Ohio State University will not tolerate the following conduct or behavior: * * * Possession of deadly weapons on University property;”.
11. **Third**, the OSU Department of Recreational Sports serves the university as a unit of the Office of Student Life and has issued its *Standards of Conduct*, which states, in pertinent part: “4. SAFETY 4.1 Firearms and Weapons 4.1.1 Concealed weapons are prohibited on the campus except by a licensed person in a locked vehicle or by law enforcement officers. University police and codes of conduct prohibit the possession of weapons.”
12. **Fourth**, the OSU 2013-14 *Residence Hall Handbook, Community Standards of Conduct*, which states in pertinent part: “7.2 Firearms and Weapons (a) Possession and/or use of any type of firearm or other weapon is not permitted in or around University Housing. This includes, but is not limited to, guns, chemical and dry ice bombs, explosives, bows and arrows, darts, fireworks, knives, paint guns, BB guns, pellet guns, airsoft guns, tasers/stun-guns, nightsticks, and martial arts implements. This prohibition includes persons in possession of a concealed firearms permit.” The “Community Standards of Conduct” set forth in the aforementioned Handbook applies to the OSU Columbus Main Campus and the Handbooks for the branch campuses at OSU Mansfield, OSU Newark, and the



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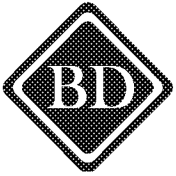
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OSU Agricultural and Technical Institute in Wooster all contain identical provisions.

13. All of the aforementioned rules and/or regulations described in the preceding four paragraphs are attached hereto as Exhibits 1 - 4 and are collectively referred to as the “unlawful rules” within this Complaint.
14. At a town hall meeting on student safety held at Defendant OSU’s main campus on March 27, 2012, the then-president and now President Emeritus, E. Gordon Gee stated the following: “But I’m in charge and we’re not going to do it ... I have looked at these issues very, very carefully, it is not in the interest of a great university whereabouts, the ideas of allowing guns.” An article from the Defendant’s campus newspaper, the OSU *Lantern* from April 2, 2012 is attached hereto as Exhibit 5, which contains Dr. Gee’s statements.
15. The unlawful rules promulgated and enforced by Defendant OSU restrict the fundamental rights to keep and bear arms, including the common law and Constitutionally protected rights of Plaintiffs and OSU students, faculty, staff, employees, visitors and the public. The rights violated include the fundamental right of self defense of OSU students residing in University housing, who are unable to keep a firearm in their residences for their defense and security. See, e.g., *District of Columbia v. Heller*, 554 U.S. 570 (2008); *McDonald v. Chicago*, 561 U.S. 3025 (2010), and *Klein v. Leis*, 99 Ohio St.3d 537, 2003-Ohio-4779.
16. Defendant OSU has appointed state university law enforcement officers pursuant to ORC § 3345.04, which officers are organized as the University Police Division, within the Department of Public Safety. These officers are sworn to uphold the



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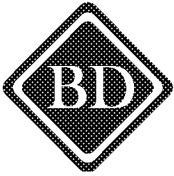
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Constitution and laws of Ohio, yet are also charged by the University with the enforcement of Defendant OSU's unlawful rules pursuant to ORC § 3345.21 and OAC Rule 3335-23-05(B)(1), placing these peace officers in an untenable position of violating the very laws that they are sworn to uphold and exposing the State of Ohio to civil liability.

17. Defendant OSU's unlawful rules purport to regulate the ownership, possession, purchase, other acquisition, transport, storage, carrying, sale, or other transfer of firearms, their components, and their ammunition, in violation of law and exposing the State of Ohio to civil liability.
18. Plaintiffs have all suffered and continue to suffer harm as a result of Defendant's unlawful rules, including, but not limited to, that Plaintiff Guenther and the organizational Plaintiffs' members are unable to exercise their Constitutional and statutory rights, including the right to assemble and freely associate while bearing arms.
19. Defendant impliedly admits disciplining students pursuant to the unlawful rules as stated to the *Columbus Dispatch* in the article titled "Ohio State not only school to ban guns on campus," from Thursday, July 10, 2014: "Gary Lewis, an OSU spokesman, said no students have been disciplined under the no-gun policy since at least 2010."
20. Upon information and belief, Plaintiff Students for Concealed Carry Foundation, Inc., has been harmed and is being harmed by Defendant OSU, in that its members are unable to freely assemble and associate with their firearms on the OSU campus without fear of legal action by Defendant.



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21. Upon information and belief, Plaintiff Ohioans for Concealed Carry, has been harmed and is being harmed by Defendant OSU, in that its members are unable to freely assemble and associate with their firearms on the OSU campus without fear of legal action by Defendant.
22. Upon information and belief, Plaintiff Ryan A. Guenther, has been harmed and is being harmed in that his Constitutional and Statutory rights to carry a firearm, openly or concealed, and to protect himself as well as others is being infringed as a result of the Defendant's unlawful rules. Due to Defendant's unlawful rules Mr. Guenther has chosen to not carry a firearm for purposes of self-defense on the OSU campus in accordance with Ohio law for fear of repercussion at the hands of the University, due to its unlawful rules.
23. Upon information and belief, the Defendant OSU's mere promulgation and publishing its unlawful rules have a chilling effect on the exercise of fundamental and statutory rights by Plaintiffs and the citizens of Ohio.
24. Plaintiffs Students for Concealed Carry foundation, Inc., and Ohioans for Concealed Carry, assert that (1) its members have proper standing individually, including co-Plaintiff Ryan A. Guenther, (2) the interest of the Plaintiffs' being sought to be protected are germane to Plaintiffs' organizational purposes as stated in this Complaint, and (3) the participation of any individual member is not required to achieve that which is requested in the prayer for relief.



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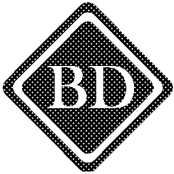
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COUNT ONE – Declaratory Judgment

25. Plaintiffs expressly incorporate by reference all of the allegations contained in the preceding paragraphs of the complaint as though expressly rewritten herein and in each additional claim.
26. The unlawful rules of Defendant violate Article I, Section 4 of the Ohio Constitution, which states, in pertinent part, “The people have the right to bear arms for their defense and security * * *” and ORC § 9.68, which provides for uniform laws regulating firearms throughout the state. The Supreme Court of Ohio has determined that only federal and state laws can limit an individual’s right to bear arms, see, e.g., *Cleveland v. State*, 2010-Ohio-6318, *Ohioans for Concealed Carry, Inc. et al. v. City of Clyde et al.*, 2008-Ohio-4605.
27. The unlawful rules described above and OAC Rule 3335-23-01 “Jurisdiction,” violate ORC § 2923.126(B)(5), which permits concealed handguns in vehicles by those with concealed handgun licenses (CHL), prohibiting only concealed handguns as follows on “Any premises owned or leased by any public or private college, university, or other institution of higher education, unless 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;”. (emphasis added) To the extent that the aforementioned “Jurisdiction” rule in the OSU Code of Student Conduct has a “long arm” provision that purports to extend the University’s prohibition on guns to geographic areas not owned or leased by OSU, where students with valid CHLs could otherwise carry a handgun, that rule also violates Ohio law.



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28. The unlawful rules described above and OAC Rule 3335-23-01 Jurisdiction, all violate ORC § 9.68, which permits open carry of firearms by lawful possessors except in statutorily prohibited places, in that these rules prevent law-abiding gun owners from possessing and/or carrying their firearms/ammunition openly and unconcealed while on OSU property and while attending University-affiliated events or otherwise while subject to the disciplinary jurisdiction of Defendant OSU.
29. Upon information and belief, the unlawful rules described herein have caused Defendant OSU to violate students' rights by threatening to, or imposing unlawful disciplinary action upon said students, including Plaintiff Guenther.
30. Upon information and belief, the unlawful rules described herein have caused Defendant OSU to violate employees' rights by threatening to, or imposing unlawful disciplinary action.
31. Upon information and belief, Defendant OSU maintains personal information systems as those terms are defined in ORC chapter 1347.
32. Upon information and belief, Defendant OSU maintains personal information systems with the illegal disciplinary actions described herein.
33. Upon information and belief, Defendant OSU maintaining these personal information systems with the illegal disciplinary actions has a chilling effect on students' exercise of their fundamental Constitutional and statutory rights as described herein.
34. ORC § 149.40 states "The head of each public office shall cause to be made only such records as are necessary for the adequate and proper documentation of the



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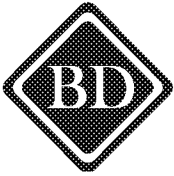
organization, functions, policies, decisions, procedures, and essential transactions of the agency and for the protection of the legal and financial rights of the state and persons directly affected by the agency's activities.”

35. ORC § 1347.05 states “Every state or local agency that maintains a personal information system shall:***(F) Develop procedures for purposes of monitoring the accuracy, relevance, timeliness, and completeness of the personal information in this system, and, in accordance with the procedures, maintain the personal information in the system with the accuracy, relevance, timeliness, and completeness that is necessary to assure fairness in any determination made with respect to a person on the basis of the information;***(H) Collect, maintain, and use only personal information that is necessary and relevant to the functions that the agency is required or authorized to perform by statute, ordinance, code, or rule, and eliminate personal information from the system when it is no longer necessary and relevant to those functions.”

36. The aforementioned disciplinary records maintained by Defendant OSU are based on illegal actions of Defendant OSU, actions that are void *ab initio*. Maintaining these records is unnecessary for the proper administration of Defendant OSU and these records are not timely, accurate, or relevant and should therefore be expunged.

COUNT TWO – Injunctive Relief

37. Plaintiffs expressly incorporate by reference all of the allegations contained in the preceding paragraphs of the complaint as though expressly rewritten herein and in each additional claim.



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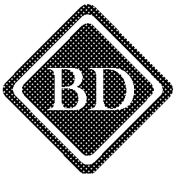
38. Plaintiffs have no adequate remedy at law or otherwise for the harm or damage done and/or threatened to be done by Defendant, and/or its officers, agents and/or employees, as evidenced by the allegations contained herein, which includes past, present and future ongoing conduct.

39. Plaintiffs will suffer irreparable harm, damages, and injury unless the acts and conduct of Defendant above complained of are permanently enjoined by an order of this Court.

COUNT THREE – Attorney Fees

40. Plaintiffs expressly incorporate by reference all of the allegations contained in the preceding paragraphs of the complaint as though expressly rewritten herein and in each additional claim.

41. As a party that prevails to its challenge to the Defendant's unlawful rules, Plaintiffs would then be entitled to their costs and attorney fees per ORC § 9.68 (B), which states: "In addition to any other relief provided, the court **shall** award costs and reasonable attorney fees to any person, group, or entity **that prevails** in a challenge to an ordinance, rule, or regulation as being in conflict with this section." (emphasis added)



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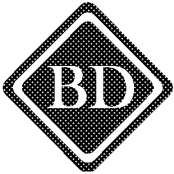
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WHEREFORE, the Plaintiffs respectfully request this Court to grant judgment in their favor against Defendant and enter an order entitling Plaintiff to:

- a) A declaration that all of the unlawful rules are void *ab initio* and unenforceable;

- b) A permanent injunction against Defendant ordering it to not enforce its unlawful rules and to not promulgate any other rules governing any firearm, part of a firearm, its components, and its ammunition which conflict with statutory state law;
- c) An order directing Defendant OSU to immediately expunge and destroy all disciplinary records based on the unlawful rules from March 14, 2007 to present.
- d) Have the Clerk serve the above Order(s) of the Court on the Attorney General of Ohio, the Director of the Ohio Department of Public Safety, the Franklin County Prosecuting Attorney, the Columbus City Attorney, the Superintendent of the Ohio State Patrol, the Sheriff of Franklin County, Ohio, the Chief of Police of the City of Columbus, the Vice-President of Student Life at OSU, the Vice-President for Administration at OSU, the Assistant Vice-President for Public Safety at OSU, and the Chief of Police at OSU. All of the aforementioned officers shall be directed to inform their employees, officers, agents, and troopers of this decision in writing;
- e) An order awarding attorney fees and court costs;
- f) Such other relief that this Court deems to be just and equitable.



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Respectfully submitted,

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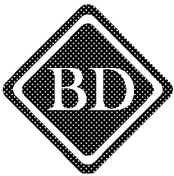
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Attorneys for the Plaintiff

CERTIFICATE OF SERVICE

The undersigned certifies that a true and accurate copy of the foregoing Document was served this September 2, 2014 via US Mail/E-File upon the following:

Ohio Attorney General's Office
ATTN: Amy Golian, Assistant Attorney General
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/s/ Derek DeBrosse
Derek A. DeBrosse



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