

Sen. Coghill and members of the Judiciary Committee,

My name is Matthew Carberry, representing myself. I am a lifelong Alaskan and a continuing student at UAA in the Justice and Philosophy programs. I recently testified via telephone in support of SB 176 and wanted to provide a written summary/extension of my prepared remarks as I will likely run out of time.

I am sure you will hear many references to the 2nd Amendment so I don't wish to belabor that point, but a brief review is necessary to show the weakness of the Regents' legal position. The 2nd Amendment to the US Constitution, as reaffirmed in "Heller", protects an individual right to bear arms for self-defense; that ruling was later applied to the states in "McDonald." Last week the 9th Circuit Ct of Appeals in "Peruta", and today in "Richards", clarified that the core of the right extends to the freedom to carry a weapon in public for self-defense that cannot be denied to the law-abiding by state or local governments. Further, in the 9th Circuit any "time, place, or manner" restrictions on the 2nd Amendment right are subject to at least the "Intermediate" judicial standard of scrutiny per their decision in "Nordyke."

Similarly, the Alaska Constitution also enshrines an individual right to bear arms for self-defense and specifically preempts state agencies, subsidiaries, and local governments from regulating carry beyond the restrictions in state law. The Legislature has reexamined the carry law many times in the past two decades and at no point has determined that the UA campuses need to be made "prohibited places" per statute.

The Board of Regents has only a limited grant of authority in statute –AS14.14.170(b)- to "(1) adopt *reasonable* rules...with *reasonable* penalties for the good government of the University..." (emphasis mine). Given that we are dealing with the peaceable exercise, by adults, of an individual Federal and State Constitutional right, preempted from other regulation by State statute; there is no legal basis for the University to claim that their utter abrogation of the right to carry meets any standard of "reasonability".

Regardless of any other arguments they may make, the appointed Board of Regents simply did not have the legal authority to create this policy in 1995 and does not have the legal authority to enforce it today.

Philosophically, the peaceable exercise of a fundamental right does not require any defense, the presumption is toward liberty. Those adults who wish to peaceably and responsibly carry on campus exactly as they currently carry off-campus are not obligated to give any sort of reason or justification. The burden is instead on those who wish to restrict such exercise to justify, with facts and well-reasoned argument, any such restrictions. An examination of the arguments made on behalf of the Board of Regents by Pres. Gamble will clearly show that the University's policy fails on philosophical grounds as well.

It bears repeating that this bill does not discuss “arming students” or “arming teachers” but rather allowing those adults, students, staff, and visitors, who already safely and responsibly carry off-campus to do so on campus free from arbitrary infringement.

Pres. Gamble presented the Regents’ argument that the presence of K-12 students on campuses should allow the University to create a “prohibited place by proxy” status for itself, outside of statute. However, this argument, taken to its logical extreme, would equally justify making all of Alaska a “prohibited place,” as those same K-12 students are in the presence of lawful carriers every moment they are not physically on the grounds of their K-12 school.

The State’s carry law has been in effect for two decades. Several generations of K-12 students on field trips to the library, museum, theatre, or park, much less in stores, churches and private homes, have thus been in the presence of lawful carriers with no notable incidents to report. For the Board to now claim that allowing lawful carriers on campus will create such incidents is illogical and ill-befits a “Temple of Reason.”

Pres. Gamble presented a further series of hypotheticals: That people would open carry Bushmaster rifles (a disappointingly blatant reference to the Newton tragedy) on campus, even though the open carry of rifles in the Alaskan cities in which those campuses are located has not been a problem these past years. That adult students and staff, carrying lawfully, might deliberately intimidate others or lash out with violence in heated discussions; even though those same carriers don’t appear to be currently doing such things at, for example, their jobs or while energetically discussing current events in coffee shops as they carry off-campus. Nor do the dozens of campuses nationwide that allow such carry report such incidents.

The burden is on the Regents to explain why they believe Alaskan students, staff, and visitors, who can and do already carry safely and responsibly off campus, will be unable to do so on-campus; and why Alaskan students and staff will be less responsible and capable of handling the peaceable exercise of a fundamental civil right than the students and staff on dozens of other campuses across the country.

Pres. Gamble suggests on behalf of the Regents that the University Police Department, unlike every other local police department in Alaska (including in those communities that contain UA campuses) would find itself unable to deal with hypothetical issues lawful carry might raise. The Regents’ position is actually a bit insulting to the UA police officers, as it implies they are less well-trained and/or less competent than their fellow Alaskan officers and the officers on the dozens of campuses that allow carry nationwide. I would say the Regents have a duty to explain that implicit contention as well.

The final claim presented by the Regents in an attempt to scare the Legislature into allowing this unsupportable policy to stand is a financial one. The Regents claim that “security” will need to be reassessed at an exorbitant rate. This argument, like the others, fails once briefly considered. The current policy has no legal weight, it only provides for misdemeanor trespass for visitors found to be armed (who then refuse to leave), and employment and academic sanction for staff and students.

For the Board to claim that this toothless policy, on its own, has created and maintained an environment where some areas can be left unsecured now, which would then have to be secured if the policy goes away, beggars belief. Those areas which would need security on the policies repeal should already be properly secured and if they are not the Board owes the people and the Legislature an explanation for their laxity.

In summary, the UA Board of Regent's policy lacks legal, philosophical, and logical support. Their defense of a policy that utterly abrogates the peaceable exercise of a fundamental right depends solely on emotionally-driven scare tactics and recitation of hypotheticals and anecdotal events so uncommon as to be made notable by their existence. It depends on ignoring the experience of dozens of campuses in multiple states which have already trodden this ground with no demonstrated problems. Finally, it depends on baseless assertions that people who already responsibly carry off campus will be unable to do so on-campus; and students, staff and employees who deal with those carriers off campus will become unable to do so in the few hours a day they spend on University property.

Thank you,

Matthew Carberry