

## Options for Idaho Faculty and Firearms in their Classrooms

By Nick Gier, President, Idaho Federation of Teachers

The presidents and their faculty at Idaho's colleges and universities voiced their strong opposition, but the Idaho Legislature passed Senate Bill 1254 allowing firearms in our classrooms. The UI faculty union has hired an attorney to research the legal options for Idaho teachers, and I will now summarize his legal memo on this vital matter. See the complete document at [www.idaho-aft.org/GunsCampus.pdf](http://www.idaho-aft.org/GunsCampus.pdf).

In 2008 the U. S. Supreme Court ruled in *District of Columbia v. Heller* that the Second Amendment right to bear arms may be limited in some instances. Specifically, the good justices stated that laws that prohibit firearms in schools and government buildings are constitutional. They also concluded that laws "imposing conditions and qualifications on the commercial sale of arms" may be allowed.

In 2010 the Supreme Court reaffirmed *Heller* in *MacDonald vs. City of Chicago*, ruling that *Heller* applies to state governments. The justices reiterated their exclusion of carrying weapons in schools and government buildings from Second Amendment protection. In its passionate Second Amendment absolutism, the Idaho Legislature ignored conservative jurists on the highest court in the land.

With regard to Idaho's Constitution and the right to bear arms, our attorney noted that Idaho laws currently ban "firearms in public schools and most county courthouses, including the Latah County Courthouse. . . , and my best educated guess is that a university ban on firearms does not violate Idaho's 'Second Amendment.'"

Our attorney argues that the UI could have used its constitutional status as a means to nullify Idaho Senate Bill 1254. The UI was established in 1889, one year before the state of Idaho. The Idaho Constitution includes the UI Constitution, which entrusts the UI Regents with ultimate power to make decisions for the University. Theoretically and legally, the UI Counsel's office could have advised the UI Regents to refuse to implement Senate Bill 1254.

Our attorney cites four Idaho Supreme Court decisions that upheld the UI's status as a separate legal entity. For example, there is the 1921 case of *Black v. State Board of Education*, in which the Idaho Supreme Court ruled that the UI could not be compelled to hand over money from the sale of its property to the state. The justices' reasoning was that the UI, having its own constitution, is "not subject to the control or supervision of any other branch, board or department of the state government, but is a separate entity."

Idaho Senate Bill 1254 does exclude firearms from student dormitories and public entertainment facilities of over 1,000 seats. Other than these exceptions, however, our attorney states that the breath of this new law is "quite extraordinary." A person with an "enhanced concealed carry permit" does not actually have to conceal the weapon. Our attorney explains that a person "will be allowed to walk around campus and into classrooms with a gun in plain view, and the UI cannot regulate this in any way."

While our attorney believes that Senate Bill 1254 violates the UI's own constitutional right to administer its own affairs, he does not believe that it would be advisable for any faculty member or faculty group to sue the State of Idaho. First, as odd as it sounds, we may not have legal standing to do so. Second, even if faculty succeed in challenging the law, the UI itself has

already decided to comply with the law, and there is obviously nothing illegal or unconstitutional about its doing so.

Another legal alternative is to require that students attending Idaho's colleges and universities sign a contract stipulating that they may not bring firearms to class. In *George v. University of Idaho* the Idaho Supreme Court ruled that "the principal relationship between a college and its students is contractual." Our attorney, however, concedes that "not all contracts are legal or enforceable. Agreements which violate public policy or law are sometimes held to be illegal contracts."

Alternatively, Idaho faculty could argue that Senate Bill 1254 violates their own contracts with their institutions. University policy manuals are considered part of a faculty member's contract, and the UI *Faculty-Staff Handbook* states that the UI "will foster an academic environment conducive to the students' mental, physical, and social development and well-being" (Sec. 1320 E-1).

The *Handbook* also states that "certain forms of responsible conduct must be adhered to in order to ensure the physical functioning and safety or security of the [UI] community" (Sec. 2300 Art. VI, Sec. 1). Faculty members could very well argue that their contractual duties promoting student well-being and maintaining classroom security are violated by Senate Bill 1254.

Most Idaho faculty receive an annual contract stating their salary and conditions of employment. Before signing, language such as the following could be added: "I reserve the right to control what objects and materials students may bring into the classroom."

Asserting their own autonomy, faculty members could also put up a sign "no weapons allowed" on their classroom doors, or they could offer an equivalent on-line course to arms-carrying students. They could also request that their classes be held in one of the large halls exempted under the new law.

As we are unsure about the success of any legal action against the state, we recommend that Idaho faculty, if they so desire, follow through with some of these contractual options or classroom strategies.

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