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FILED IN UNITED STATES DISTRICT  
COURT, DISTRICT OF UTAH  
JUL - 1 2002  
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ATTORNEYS FOR *AMICI*

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

UNIVERSITY OF UTAH, a body  
corporate and politic under Utah  
law, and J. BERNARD MACHEN,  
President of the University of Utah,

Plaintiffs,

vs.

MARK L. SHURTLEFF, Utah  
Attorney General,

Defendant.

Case No. 2:02CV-0212K

Honorable Dale A. Kimball

MOTION OF AMERICAN COUNCIL ON  
EDUCATION; AMERICAN ASSOCIATION  
OF COMMUNITY COLLEGES; AMERICAN  
ASSOCIATION OF UNIVERSITIES;  
AMERICAN ASSOCIATION OF STATE  
COLLEGES AND UNIVERSITIES;  
NATIONAL ASSOCIATION OF STATE  
UNIVERSITIES AND LAND-GRANT  
COLLEGES; UTAH STATE UNIVERSITY;  
and SECURITY ON CAMPUS, INC., FOR  
LEAVE TO PARTICIPATE AS *AMICI*  
*CURIAE* AND FILE BRIEF IN SUPPORT OF  
PLAINTIFF'S MOTION FOR SUMMARY  
JUDGMENT

The American Council on Education, American Association of Community Colleges, American Association of Universities, American Association of State Colleges and Universities, National Association of State Universities and Land Grant Colleges, Utah State University and Security on Campus, Inc. request leave to participate as *amici curiae* and to file the attached brief in support of Plaintiff's Motion for Summary Judgment. Plaintiff has filed a Motion for Summary Judgment seeking a declaration that the University of Utah's enactment and maintenance of a policy prohibiting firearms on campus is lawful.

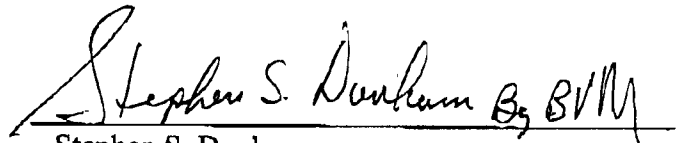
The outcome of this litigation directly impacts each of the organizations seeking leave to participate as *amici*. These higher education associations represent institutions of higher education nationwide, and are interested in the litigation in order to ensure that a college or university remains free to adopt and enforce policies-- such as a firearms policy-- that protect speech and are consistent with its educational mission. Utah State University and Security on Campus, Inc. share this interest. The attached brief examines a university's constitutional right of academic freedom to adopt its firearms policy free from state interference, and may assist the Court in deciding the pending Motion for Summary Judgment.

Counsel for *amici* asked the Utah Attorney General to consent to our participation and to our filing a brief as *amici curiae* in this case; however, the Utah Attorney General was unable to respond in the time requested. The filing of this brief is timely and will not prejudice Defendant's ability to present his case, because Defendant has not yet responded to Plaintiff's Motion for Summary Judgment.

WHEREFORE, the American Council on Education, American Association of Community Colleges, American Association of Universities, American Association of State Colleges and Universities, National Association of State Universities and Land Grant Colleges, Utah State University, and Security on Campus, Inc. respectfully request that the Court permit their participation as *amici curiae* and the filing of the attached brief.

DATED this 1<sup>st</sup> day of July, 2002.

Respectfully submitted,

Handwritten signature of Stephen S. Dunham, followed by the initials "By BVM".

Stephen S. Dunham  
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ATTORNEYS FOR *AMICI CURIAE*  
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ASSOCIATION OF COMMUNITY  
COLLEGES; AMERICAN ASSOCIATION  
OF UNIVERSITIES; AMERICAN  
ASSOCIATION OF STATE COLLEGES  
AND UNIVERSITIES; NATIONAL  
ASSOCIATION OF STATE  
UNIVERSITIES AND LAND-GRANT  
COLLEGES; UTAH STATE  
UNIVERSITY; and SECURITY ON  
CAMPUS, INC.

## CERTIFICATE OF MAILING

I hereby certify that on this 1 day of July, 2002, a true and correct copy of the foregoing **MOTION OF AMERICAN COUNCIL ON EDUCATION; AMERICAN ASSOCIATION OF COMMUNITY COLLEGES; AMERICAN ASSOCIATION OF UNIVERSITIES; AMERICAN ASSOCIATION OF STATE COLLEGES AND UNIVERSITIES; NATIONAL ASSOCIATION OF STATE UNIVERSITIES AND LAND-GRANT COLLEGES; UTAH STATE UNIVERSITY; and SECURITY ON CAMPUS, INC. FOR LEAVE TO PARTICIPATE AS *AMICI CURIAE* AND FILE BRIEF IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT** was placed in the U.S. Mail, postage prepaid, addressed to the following:

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UNIVERSITY OF UTAH, a body  
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President of the University of Utah,

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Attorney General,

Defendant.

Case No. 2:02CV-0212K

Honorable Dale A. Kimball

[PROPOSED] ORDER GRANTING MOTION  
OF AMERICAN COUNCIL ON  
EDUCATION; AMERICAN ASSOCIATION  
OF COMMUNITY COLLEGES; AMERICAN  
ASSOCIATION OF UNIVERSITIES;  
AMERICAN ASSOCIATION OF STATE  
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NATIONAL ASSOCIATION OF STATE  
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and SECURITY ON CAMPUS, INC., FOR  
LEAVE TO PARTICIPATE AS *AMICI*  
*CURIAE* AND FILE BRIEF IN SUPPORT OF  
PLAINTIFF'S MOTION FOR SUMMARY  
JUDGMENT

The Court, having considered American Council on Education, American Association of Community Colleges, American Association of Universities, American Association of State Colleges and Universities, National Association of State Universities and Land Grant Colleges, Utah State University; and Security on Campus, Inc.'s Motion for Leave to Participate as *Amici Curiae* and File Brief in Support of Plaintiff's Motion for Summary Judgment, hereby ORDERS that the motion is GRANTED.

The American Council on Education, American Association of Community Colleges, American Association of Universities, American Association of State Colleges and Universities, National Association of State Universities and Land Grant Colleges, Utah State University; and Security on Campus, Inc.'s Brief in Support of Plaintiff's Motion for Summary Judgment is accepted for filing and consideration by the Court.

DATED this \_\_\_ day of \_\_\_\_\_, 2002.

---

Honorable Dale A. Kimball

CERTIFICATE OF MAILING

I hereby certify that on this 15 day of July, 2002, a true and correct copy of the foregoing [PROPOSED] ORDER GRANTING MOTION OF AMERICAN COUNCIL ON EDUCATION; AMERICAN ASSOCIATION OF COMMUNITY COLLEGES; AMERICAN ASSOCIATION OF UNIVERSITIES; AMERICAN ASSOCIATION OF STATE COLLEGES AND UNIVERSITIES; NATIONAL ASSOCIATION OF STATE UNIVERSITIES AND LAND-GRANT COLLEGES; UTAH STATE UNIVERSITY; and SECURITY ON CAMPUS, INC. FOR LEAVE TO PARTICIPATE AS *AMICI CURIAE* AND FILE BRIEF IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT was placed in the U.S. Mail, postage prepaid, addressed to the following:

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BRIEF OF *AMICI CURIAE* AMERICAN  
COUNCIL ON EDUCATION; AMERICAN  
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OF UNIVERSITIES; AMERICAN  
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AND UNIVERSITIES; NATIONAL  
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AND LAND-GRANT COLLEGES; UTAH  
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**DISCLOSURE STATEMENT  
AND STATEMENTS OF INTEREST OF AMICI**

The American Council on Education ("ACE"), American Association of Community Colleges ("AACC"), American Association of Universities ("AAU"), American Association of State Colleges and Universities ("AASCU"), National Association of State Universities and Land Grant Colleges ("NASULGC"), Utah State University, and Security On Campus, Inc. ("SOC") have simultaneously moved this Court for leave to participate as *amici*. If the Court grants this Motion, *amici* submit this brief in support of plaintiffs' Motion for Summary Judgment.

The American Council on Education ("ACE") represents all sectors of American higher education. Its approximately 1,800 members include a substantial majority of colleges and universities in the United States. Since its founding in 1918, ACE has sought to promote high standards in higher education, in the belief that a strong higher education system is the cornerstone of a democratic society. ACE's initiatives address issues of national importance, ranging from higher education quality and affordability to the responsiveness in other respects of colleges and universities to the nation's needs.

The American Association of Community Colleges ("AACC") is the primary advocacy organization for the nation's 1,100 two-year, degree-granting institutions. Organized in 1920, AACC promotes the causes of its member colleges through: legislative advocacy; monitoring of national issues and trends; collection, analysis, and dissemination of information; representation with other educational agencies and the national media; and research and publication of news and scholarly analysis.

Founded in 1900, the Association of American Universities (“AAU”) represents 62 public and private major research universities. AAU assists its members in developing national policy positions on issues relating to academic research and graduate and professional education. In addition, AAU provides members with a forum for discussing other institutional issues, such as undergraduate education.

The American Association of State Colleges and Universities (“AASCU”) is a leading higher education association that represents more than 400 state colleges and universities across the United States and in Puerto Rico, Guam, and the Virgin Islands. Formed in 1961, AASCU monitors higher education policies at the national and state level and serves as a forum for examining and acting upon higher education issues. AASCU believes that public colleges and universities have a special role in our society — that of providing educational opportunity to everyone, regardless of economic condition, age, sex, or ethnic background.

The National Association of State Universities and Land-Grant Colleges (“NASULGC”), founded in 1887, is the nation’s oldest higher education association. Representing more than 200 institutions — including public universities, land-grant institutions, and many of the nation’s public university systems — NASULGC works to support the contributions that state and land-grant universities make through teaching, research, and public service.

Utah State University was created through the Morrill Act of 1862 to be Utah’s land-grant institution. The institution’s Charter emphasizes high quality instruction, groundbreaking research, and global dissemination of those findings.

Today Utah State University welcomes nearly 22,000 students each year to its main campus in Logan, Utah, and to time-enhanced learning centers throughout the state. Nearly 4,500 students have received degrees through the University’s branch campuses.

Utah State University does not presently have a policy that bans firearms, beyond that contemplated by current state law. However, Utah State University does limit, by contract or lease, the right of students to possess firearms in resident housing, even with a lawfully issued permit. As such, the legality of this limiting provision has sometimes been vocally challenged by students and lawmakers, but as of yet, not legally.

It is the belief of Utah State University that supplying safe student housing is a unique function of the University and necessary extension of the academic freedom of a university. It would be the intent of the present administration of USU to go beyond banning all guns from resident student housing, and to pursue an overall policy similar to the University of Utah, should they prevail in this lawsuit.

Security On Campus, Inc., is the only national non-profit organization devoted exclusively to the prevention of college and university campus violence and other crimes. Since SOC's founding in 1987 by Connie and Howard Clery, whose daughter Jeanne was raped and murdered on campus, SOC has sought to make campuses safer by ensuring that students are made aware of crimes and other dangers to their safety on campus. SOC's efforts have been the impetus for numerous state and federal laws that disclose greater campus crime information to members of the public, including current and prospective students. SOC is based in King of Prussia, Pennsylvania.

*Amici* are critically concerned with ensuring a college's or university's (for convenience, referred to collectively as "university") freedom to adopt and enforce policies consistent with its educational mission. As with all universities, the University of Utah seeks to create a campus atmosphere conducive to teaching, learning, and the open exchange of diverse ideas— an atmosphere safe from and not stifled by threats or acts of physical violence on the school

premises. *See* Complaint, at ¶¶ 4, 32-33. In order to foster this safe and open academic environment, the University of Utah enacted a policy prohibiting the carrying of firearms on campus by its students, faculty and staff. Defendant Attorney General, however, has stated that the University of Utah's policy is contrary to state law. Op. Att'y Gen. No. 01-002, n.13 (2001).

The University of Utah is not alone in its efforts to enforce an academic policy prohibiting the possession of firearms on campus. Many of *amici's* members (universities throughout the nation) have similar policies in place, and all share the interest in creating and protecting an open and safe academic environment. The resolution of this issue, therefore, will have a substantial impact on these institutions and the academic community as a whole.

The University of Utah has asked the Court to decide, *inter alia*, that its firearms policy supports its educational mission, furthers the creation of an open and safe academic environment and is protected against state interference under academic freedom and the First Amendment. *Amici* respectfully request the Court to recognize the University of Utah's constitutional right of academic freedom and its right to adopt its firearms policy free from state interference.

#### ARGUMENT

At stake in this case is the right of a university to adopt and enforce policies that support and promote its educational mission and help create a secure and open academic atmosphere for students, faculty, staff and the broader academic community. The Attorney General's public abrogation of the University of Utah's policy prohibiting faculty, students and staff from possessing firearms on campus implicates a fundamental right of academic freedom and creates a First Amendment issue of critical importance.

Although "academic freedom" is not expressly enumerated in the First Amendment, courts and case law have stated that it is entitled to constitutional protection. *Sweezy v. New*

*Hampshire*, 354 U.S. 234, 262-64 (1957) (Frankfurter, J., concurring). See *Board of Regents v. Southworth*, 529 U.S. 217, 237-38 n.3 (2000) (Souter, J., concurring); *Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265, 312 (1978). Indeed, academic freedom has “long been viewed as a special concern of the First Amendment.” *Bakke*, 438 U.S. at 312. As a special concern of the First Amendment, the “government should be extremely reticent to tread” in this area. *Sweezy*, 354 U.S. at 250.

In this Brief, *amici* first analyze in Part I the existence of a university’s First Amendment right to institutional academic freedom. This right exists both to protect a university’s institutional interests and to protect and promote the rights of individuals within the university. In Part II, we seek to establish that a university’s academic freedom protects its right to make decisions and adopt and enforce policies that further its academic mission. Finally, in Part III, *amici* explain that the University of Utah’s no-gun policy falls squarely within this protection, and draw on the purposes of academic firearms policies and their members’ experiences to explain how the University of Utah’s policy furthers and protects both institutional and individual rights.

**I. UNIVERSITIES HAVE A CONSTITUTIONAL RIGHT TO INSTITUTIONAL ACADEMIC FREEDOM, WHICH IN TURN PROTECTS THE RIGHTS OF THE ENTIRE EDUCATIONAL COMMUNITY, INCLUDING FACULTY, STUDENTS AND SOCIETY**

Academic freedom has evolved into two discrete protections: institutional and individual. Institutional academic freedom is the right held by the university itself to engage in “autonomous decisionmaking” free from governmental interference. *Regents of Univ. of Mich. v. Ewing*, 474 U.S. 214, 226 n.12 (1985)(citations omitted); *Piarowski v. Illinois Community College Dist.* 515, 759 F.2d 625, 629 (7th Cir. 1985)(citing *Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265, 312

(1978)). Individual academic freedom, in turn, is the freedom of the individual teacher or student to participate in, and benefit from, “the independent and uninhibited exchange of ideas” free from interference by the university. *Id.*

The seeds for the constitutional protection of institutional academic freedom were sown nearly fifty years ago by Justice Frankfurter in *Sweezy v. New Hampshire*, 354 U.S. 234, 252 (1957) (Frankfurter, J., concurring). Although an individual professor was the petitioner, Justice Frankfurter highlighted the ability and freedom afforded the university as an institution to define its own mission:

This means the exclusion of governmental intervention in the intellectual life of a *university*. . . . It is the business of a *university* to provide that atmosphere which is most conducive to speculation, experiment and creation. It is an atmosphere in which there prevail “the four essential freedoms” of a *university*—to determine for *itself* on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study.

*Sweezy*, 354 U.S. at 263 (Frankfurter, J., concurring) (emphasis added); J. Peter Byrne, *Academic Freedom: A “Special Concern” of the First Amendment*, 99 Yale L.J. 251, 312-13 (1989) (“Frankfurter writes as if the university were the real party to the suit, not Sweezy, to whom he refers at one point as ‘the witness’ rather than as the petitioner”).

The Supreme Court, in *Bakke*, reinforced the academic freedom afforded universities as institutions. 438 U.S. at 312. By recognizing a university’s freedom to exercise its own discretion as to student admissions, the Court acknowledged that a university often must make choices to shape and attain its educational mission and create the academic atmosphere of a university. *Id.* (“The *freedom of a university to make its own judgments as to education includes the selection of its student body*”); *see also Widmar v. Vincent*, 454 U.S. 263, 278, 279 n.2

(1981) (discussing the availability of campus facilities for extracurricular student organizations) (Stevens, J., concurring).

Several circuit courts have interpreted the First Amendment and the Supreme Court's decisions as affording the university an institutional right to academic freedom, and, as such, have held or suggested that deference should be afforded institutional decision making. *See, e.g., Urofsky v. Gilmore*, 216 F.3d 401, 412, 414 (4th Cir. 2000) (discussing "an institutional right of self-governance in academic affairs"), *cert. denied*, 531 U.S. 1070 (2001); *Miles v. Denver Pub. Sch.*, 944 F.2d 773, 779 (10th Cir. 1991) ("The Supreme Court has recognized a university's institutional right to academic freedom") (citing *Bakke* and *Sweezy*); *Piarowski*, 759 F.2d at 629 (discussing individual and institutional academic freedom). As a further example, in *Asher v. Harrington*, the Seventh Circuit refused to second-guess the university administrators' decision to suspend classes during a period of campus demonstrations, when students challenged the administrators' judgment not to maintain the university's "normal educational activities." 461 F.2d 890, 893-94 (7th Cir. 1972). The Court explained: "Courts have generally hesitated to review purely academic matters, as in cases involving administrative decisions about curriculum, where the danger of impinging upon the authority of the institution to determine educational programs was greatest." *Id.* at 894.

Recognizing and protecting a university's academic freedom benefits the university, as an institution of higher learning, and also protects the freedom of individual faculty and students *in* the university. *Bakke*, 438 U.S. at 312. A university's freedom to make decisions regarding education and the environment in which education ought to occur ensures that teachers and students have a forum and the freedom to inquire, debate and contemplate. When teachers and students have an open, secure environment and the freedom to engage in discourse, both teacher

and student can gain exposure and perspective through the “robust exchange of ideas which discovers truth out of a multitude of tongues.” *Keyishian v. Board of Regents of Univ. of N.Y.*, 385 U.S. 589, 603 (1967) (citation omitted). Protecting freedom within the university, in turn, serves society’s continuing interest in encouraging the pursuit of knowledge and new discoveries. *Sweezy*, 354 U.S. at 250 (“To impose any strait jacket upon the intellectual leaders in our colleges and universities would imperil the future of our Nation.”). In Justice Frankfurter’s words: “For society’s good—if understanding be an essential need of society—inquiries into [areas of scholarship], speculations about them, stimulation in others of reflection upon them, must be left as unfettered as possible.” *Sweezy*, 354 U.S. at 262 (Frankfurter, J., concurring).

In sum, courts have widely accepted that a university’s academic freedom to engage in autonomous decisionmaking is entitled to constitutional protection. *Michigan*, 474 U.S. at 226 and n.12. Affording constitutional protection to a university’s decisions ultimately safeguards the freedom of the entire academic community and society’s interests in higher education.

## **II. UNIVERSITIES POSSESS A FIRST AMENDMENT RIGHT OF INSTITUTIONAL ACADEMIC FREEDOM TO ENACT AND ENFORCE POLICIES THAT ADVANCE THEIR EDUCATIONAL MISSION**

A university’s right to adopt and enforce policies that serve and protect its academic mission is at the core of a university’s constitutional right to academic freedom. Put another way, universities, as institutions of higher education, serve their educational mission by promulgating policies and procedures, and it is these policies and procedures that are entitled to constitutional protection. *Amici* respectfully submit that institutional academic freedom is lost and a university’s First Amendment rights are infringed if a university’s authority to make and enforce decisions and policies critical to its educational mission is handcuffed by the state.

The “business of a university” is to provide the academic community with an atmosphere “most conducive to speculation, experiment and creation.” *Regents of the Univ. of Cal. v. Bakke*, 438 U.S. 265, 312 (1978) (quoting *Sweezy v. New Hampshire*, 354 U.S. 234, 263 (1957) (Frankfurter, J., concurring)). To accomplish this, a university must be free to make substantive decisions that shape and affect its “business,” or educational mission. *See generally Widmar v. Vincent*, 454 U.S. 263, 268 n.5, 277 (1981) (acknowledging the Court has “never denied a university’s authority to impose reasonable regulations compatible with [its educational] mission” regarding the use of its campus); *Healy v. James*, 408 U.S. 169, 194 n.24 (1972) (college administration has “broad rulemaking power to assure that the traditional academic atmosphere is safeguarded”). The Eighth Circuit recognized—and protected—the university’s “inherent power” to enact campus regulations and to shield itself and its property from student demonstrators. *Esteban v. Central Mo. State Coll.*, 415 F.2d 1077, 1088-89 (8th Cir. 1969) (Blackmun, J.); *see Healy* 408 U.S. at 192 (quoting *Esteban*). These institutional powers preserve the atmosphere of the university, which is an undertaking “so essential to the quality of higher education.” *Bakke*, 438 U.S. at 312.

To be sure, a university’s First Amendment right to academic freedom is not absolute, and not every decision will be immune from judicial review or state intervention.<sup>1</sup> Rather, the institution’s constitutional right of academic freedom protects those university policies and decisions that further its academic mission. More specifically, at a minimum, a university’s academic freedom encompasses those policies and decisions that directly protect educational

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<sup>1</sup> For example, a university can neither refuse to disclose peer review materials that are relevant to charges of racial or sexual discrimination in tenure decisions, nor claim “academic” freedom from taxation. *See University of Pa. v. EEOC*, 493 U.S. 182, 200-01 (1990). Here, by contrast, the University’s academic interest in a firearms policy does not unreasonably restrict any countervailing individual or state interest.

content by creating and maintaining an open, vigorous and safe environment for research and learning. *See Sweezy*, 354 U.S. at 263 (Frankfurter, J., concurring) (“It is the business of a university to provide that atmosphere which is most conducive to speculation, experiment and creation. It is an atmosphere in which there prevail ‘the four essential freedoms’ of a university—to determine for itself on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study”). A university’s interest in enacting and enforcing policies and decisions that serve those purposes and protect free speech on campus, while not unnecessarily or unreasonably infringing any competing constitutional right of an individual or substantial and overriding governmental interest, should be protected.

Where possible, a court should seek to reconcile a protected exercise of institutional academic freedom with an allegedly conflicting state action or statute. This reconciliation can best be accomplished by construing the state action so as to avoid abridging the constitutional right involved. Specifically, since the state may not abridge the University of Utah’s First Amendment right of academic freedom, the court should interpret the state legislation in a way that does not violate the University of Utah’s academic freedom right to adopt its firearms policy. Interpretation of the Utah state statutes is beyond the scope of this amicus brief, but the process should be guided by the constitutional principles discussed here. *See Plaintiff’s Motion for Summary Judgment*, at 12-20.

**III. A POLICY PROHIBITING FIREARMS ON CAMPUS IS PROTECTED AS AN EXERCISE OF INSTITUTIONAL ACADEMIC FREEDOM BECAUSE IT FURTHERS A UNIVERSITY'S EDUCATIONAL MISSION AND CREATES A SAFE ACADEMIC ENVIRONMENT**

A university's enactment and enforcement of a policy prohibiting firearms on campus is a fundamental judgment about education and directly related to the four "essential freedoms" discussed in *Sweezy*. See *Sweezy v. New Hampshire*, 354 U.S. 234, 262 (1957) (Frankfurter, J., concurring); *Regents of the Univ. of Cal. v. Bakke*, 438 US. 265, 312 (1978) (quoting *Sweezy*, 354 U.S. at 262 (Frankfurter, J., concurring)). A university's decision to prohibit firearms on campus creates a secure, educational environment that ensures that the university's mission, the educational process and the quality of higher education can thrive—for the benefit of the entire academic community and the public good.

In this case, the mission of the University of Utah "is to educate the individual and to discover, refine and disseminate knowledge." Utah State Board of Regents Policies & Procedures §R311-5.1.1, available at <http://www.utahsbr.edu/policy/r311.htm> (last amended Aug. 3, 2002). The University of Utah determined its mission could best be effected in "an open and supportive environment that encourages reasoned discourse, honesty and respect for the rights of all individuals." University of Utah Code of Student Rights & Responsibilities, at ¶ 1, available at <http://www.saff.utah.edu/code.html> (July 14, 1997). In the judgment of the University of Utah, one mechanism to achieve and sustain this environment is a policy prohibiting the possession of firearms on campus by students, faculty and staff. Implicit in the policy is the judgment that, by their very nature, firearms and concealed weapons on campus may destabilize an open atmosphere, undermine the education of students, and impede critical inquiry and research. In this way, they have a direct and negative effect on the content of

campus speech. The very heart of institutional academic freedom is eviscerated if the state is permitted to second-guess, and ultimately obstruct, the University of Utah's reasoned judgment that a no-guns policy protects speech and advances its academic mission.<sup>2</sup>

By prohibiting the possession of firearms on campus, the University of Utah preserves the educational process and quality of higher education, for the benefit of students, teachers and society as a whole. The no-guns policy fosters the exchange of diverse and controversial ideas in an environment free from threats of violence and intimidation. Such a policy reduces the likelihood of classroom disruption and violence caused by the possible employment of a deadly weapon on school premises, and it necessarily encourages the energetic exchange of ideas. Neither faculty nor students will be forced to curb their inquiry, or worse yet be forced into silence, because another individual in the academic community may possess a firearm.<sup>3</sup> The policy allows scholarship to flourish by eliminating "an atmosphere of suspicion and distrust" among members of the academic community. *Sweezy*, 354 U.S. at 250 ("Scholarship cannot flourish in an atmosphere of suspicion and distrust. Teachers and students must always remain

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<sup>2</sup> The Attorney General may seek to counter this conclusion by citing *Berea Coll. v. Kentucky*, 211 U.S. 45, 56-57 (1908). *Berea* also involved a college's challenge to a state's law. There, the state enacted a law prohibiting the college from teaching black and white students at the same time and place. *Id.* at 54. In determining whether the state law violated the Fourteenth Amendment, the Court considered the college's charter defining its business: "Its object is the education of all persons who may attend its institution of learning at Berea...." *Id.* at 56. The Court held the state's law amending the charter by separating the students by time or place of instruction did not destroy the school's ability to achieve its educational mission. *Id.* at 57. The case, however, is largely inapposite for two reasons. First, the basis of the decision affirming separate-but-equal education was overruled by *Brown v. Board of Education*, 347 U.S. 483, 494-95 (1954). Second, the Court neither considered, nor decided, the case on the college's First Amendment right to institutional academic freedom. To the extent the case does apply, the decision implicitly prohibits state intervention that defeats a university's educational mission, which is *amici's* argument exactly. See *Berea*, 211 U.S. at 57.

<sup>3</sup> Justice Frankfurter recognized the fragility of freedom within the academic community: "It matters little whether such intervention occurs avowedly or through action that inevitably tends to check the ardor and fearlessness of scholars, qualities at once so fragile and so indispensable for fruitful academic labor." *Sweezy* at 262 (Frankfurter, J., concurring). The institutional academic freedom to make judgments prohibiting firearms on campus safeguards the vulnerable, yet fundamental, freedom of the academic community.

free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die.”). Students can learn, teachers can teach, and researchers can research free from physical violence and intellectual intimidation on campus.

The University of Utah’s no-guns policy is comparable in its purpose and effect to other institutional policies that further the academic mission and should be protected. For example, a university needs to be free to adopt policies that maintain a learning environment free of race and sex discrimination, *Bonnell v. Lorenzo*, 241 F.3d 800, 824 (6th Cir. 2001), *cert. denied*, 122 S. Ct. 347 (2001); policies to further educational quality, such as standardized teacher evaluation forms, *Wirsing v. Board of Regents of Univ. of Colo.*, 739 F. Supp. 551, 554 (D. Colo. 1990); and decisions that are in effect “academic judgments as to how best to allocate scarce resources,” *Widmar v. Vincent*, 454 U.S. 263, 276 (1981).

Many public and private institutions nationwide have adopted and enforced firearm policies similar to the University of Utah.<sup>4</sup> As reflected in these policies, *amici*’s members recognize that a campus policy prohibiting firearms on campus protects academic speech by preventing intimidation and violent and disruptive behavior, and the absence of such behavior helps create an open and safe environment for learning.

<sup>4</sup> See, e.g., University of Minn. Student Conduct Code, Part IV at ¶ 8, *available at* <http://www.umn.edu/regents/policies/academic/StudentConduct.pdf> (last amended Mar. 11, 1994); University of New Mexico Business Policies & Procedures Manual, at ¶ 2.1, *available at* <http://www.unm.edu/~ubppm/ubppmanual/2210.htm> (last amended Jan. 1, 2001); George Washington University Code of Student Conduct, at ¶ 11(g), *available at* <http://gwired.gwu.edu/cms/index.php?site=policies&id=229#5> (last visited June 25, 2002); University of New Hampshire Student Rights, Rules & Responsibilities, at p. 59 ¶ 26.1, *available at* <http://www.unh.edu/student/rights/rrguts.pdf> (last visited June 25, 2002); University of California Berkeley Campus Code of Student Conduct, at part III.A.20, *available at* <http://uga.berkeley.edu/uga/conduct.stm> (July 1998).

The adverse consequences to a university's academic mission of permitting firearms on campus are not difficult to imagine. The individual that controls the firearm controls the discussion. Consider a lecture on a controversial subject, such as abortion rights or balancing counterterrorism measures against privacy or racial profiling. These subjects have evoked the use of guns and violence off campus and could well invoke strong sentiments from within the university community. If firearms are sanctioned on campus, a single individual can directly influence or silence the entire dialogue when others are aware that the individual possesses a gun. Not only does this foreclose a "robust exchange of ideas," but it also imposes the gun carrier's viewpoint on the entire audience. *Keyishian v. Board of Regents of Univ. of N.Y.*, 385 U.S. 589, 603 (1967).

The repercussions of allowing students, faculty or staff to possess firearms on campus may also extend beyond the confines of the classroom and adversely affect various aspects of the academic life of the university. For example, to serve their missions, universities depend on procedures relating to student discipline, including hearings leading to suspension or dismissal, to maintain a safe environment where one student cannot harm or intimidate another, and to maintain a learning environment where students must meet certain minimum standards of performance. A disgruntled student with a gun can disrupt these necessary procedures and, of course, can seriously harm or even kill other participants. In order to create and maintain an open and safe academic environment for students, faculty and staff, universities have a right and an obligation to prevent such behavior.

Further, permitting individuals to possess firearms and concealed weapons on campus undermines every student and parent's right to be fully informed about campus security. As Congress has recognized, prospective students and their parents have the right to make informed

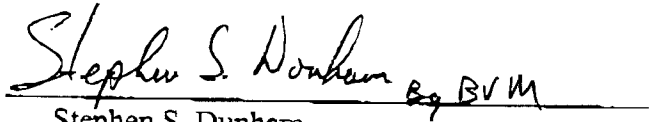
decisions about where the student should attend college based on the security of a campus. *See* 144 CONG. REC. H2510 (1998) (statement of Rep. Duncan) (discussing a university's yearly statistical reporting). Universities that receive federal funds, therefore, are obligated to disclose the number of arrests or referrals to campus disciplinary proceedings for "weapons possession." Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act, 20 U.S.C. §1092(f)(1)(F)(i)(IX). If the University of Utah's no-guns policy is declared unenforceable, it would not be able to discipline a student for "weapons possession," and this restriction on the University would undermine the federal mandate. In addition, by eliminating a critical category of reportable offenses, the state compromises students' and the academic community's rights to be fully informed about campus security.

#### IV. CONCLUSION

Allowing firearms on campus in contravention of a university's decision to ban them interferes with the discovery, refinement and dissemination of knowledge and the free flow of speech in a safe and open academic environment — the very mission of the University of Utah and of *amici's* members. *Amici* respectfully submit that a university must be immunized from state interference that would override its judgment that a no-guns policy protects speech and best furthers its educational mission. The University of Utah has a constitutional right to adopt its firearms policy to further its mission and foster an open and safe educational environment that benefits and protects students, faculty, staff, and the communities it serves.

DATED this 1<sup>ST</sup> day of July, 2002.

Respectfully submitted,

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OF STATE COLLEGES AND UNIVERSITIES;  
NATIONAL ASSOCIATION OF STATE  
UNIVERSITIES AND LAND-GRANT  
COLLEGES; UTAH STATE UNIVERSITY; and  
SECURITY ON CAMPUS, INC.

## CERTIFICATE OF MAILING

I hereby certify that on this 1st day of July, 2002, a true and correct copy of the foregoing **BRIEF OF AMICI CURIAE AMERICAN COUNCIL ON EDUCATION; AMERICAN ASSOCIATION OF COMMUNITY COLLEGES; AMERICAN ASSOCIATION OF UNIVERSITIES; AMERICAN ASSOCIATION OF STATE COLLEGES AND UNIVERSITIES; NATIONAL ASSOCIATION OF STATE UNIVERSITIES AND LAND-GRANT COLLEGES; UTAH STATE UNIVERSITY; and SECURITY ON CAMPUS, INC. IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT** was placed in the U.S. Mail, postage prepaid, addressed to the following:

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A handwritten signature in cursive script, appearing to read "Kiana Shergood", is written over a solid horizontal line.