

IN THE COURT OF APPEALS OF THE STATE OF OREGON

OREGON FIREARMS EDUCATIONAL
FOUNDATION, an Oregon nonprofit
corporation

Petitioner,

v.

OREGON STATE BOARD OF HIGHER
EDUCATION and OREGON
UNIVERSITY SYSTEM,

Respondents.

Court of Appeals No.

PETITION FOR JUDICIAL DETERMINATION OF VALIDITY OF RULE

Petitioner seeks judicial determination of the validity of an administrative rule promulgated and enforced by Respondents. Specifically, Petitioner seeks judicial determination of the validity of OAR 580-022-0045(3), which allows the imposition of sanctions against “any person” who engages in “possession or use of firearms...on institutionally owned or controlled property, unless expressly authorized by law, Board, or institutional rules.” The Respondents have construed OAR 580-022-0045(3) to prohibit the possession of all firearms by all persons on any OUS facility, even if they maintain an Oregon Concealed Handgun License (CHL). A copy of the rule is attached as Exhibit 1.

The parties to this review are:

Petitioner: Oregon Firearms Educational Foundation
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Respondents: Oregon State Board of Higher Education
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Portland State University campus
College of Urban and Public Affairs
Portland, OR 97201

Oregon University System
Chancellor's Office
111 Susan Campbell Hall
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Attorney for Respondents

Nature of the Rule Petitioner Desires Reviewed. The Department of Higher Education is a statutorily-created agency of the State of Oregon, which is operated by the Oregon State Board of Higher Education (Board). ORS 351.010. In part, the Board is responsible for promulgating rules and establishing policies for the Oregon University System (OUS). The OUS, in turn, exercises the administrative authority necessary to carry out the rules and policies of the Board. ORS 351.085.

The Board promulgated OAR 580-022-0045(3) which allows the imposition of sanctions against "any person" who engages in "possession or use of firearms...on institutionally owned or controlled property, unless expressly authorized by law, Board,

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or institutional rules.” The Board and OUS have construed OAR 580-022-0045(3) to prohibit the possession of all firearms by all persons on any OUS facility, even if they maintain an Oregon CHL. The Respondents have continued to maintain and enforce OAR 580-022-0045(3) without regard to directly conflicting state law.

In 1995, the Oregon Legislative Assembly adopted several statutes addressing the regulation of firearms. ORS 166.170(1) expressly vests the Legislative Assembly with the exclusive authority to regulate all the activities and elements related to firearms.

Except where expressly authorized by state statute, ORS 166.170(2) expressly prohibits counties, cities, and all other government entities from enacting rules that regulate, restrict, or prohibit any activities and elements related to firearms. There is no state statute expressly authorizing the Board, or the OUS, to enact rules that regulate, restrict, or prohibit any activities and elements related to firearms.

Under this same chapter, the Legislative Assembly addressed the issue of firearms on Oregon University System controlled property. ORS 166.370(1) prohibits the possession of firearms while in or on a “public building”; including, under ORS 166.360, public schools, colleges and universities. However, under ORS 166.370(3)(d), the Legislative Assembly made a specific statutory exception for those individuals licensed with an Oregon CHL.

Nature of Petitioner’s Interests. Petitioner Oregon Firearms Educational Foundation (OFEF) is an Oregon nonprofit organization that promotes, and lobbies for, the rights of gun owners. The Oregon Firearms Educational Foundation has a substantial

interest in the above referenced rule because the rule substantially affects the fundamental constitutional rights for which the organization was created to help protect.

Reasons for Review. Without limiting the theories that Petitioner may raise, Petitioner seeks review pursuant to ORS 183.400 because the rule exceeds the statutory authority of the Board and violates constitutional provisions. ORS 183.400(4)(a) to (c).

These grounds include:

1. OAR 580-022-0045(3) exceeds the statutorily granted authority of the

Respondents because:

- a. The Legislative Assembly has occupied the field of firearm control on college campuses by regulating the possession and use of firearms on Oregon University System property.
 - b. The Legislative Assembly did not give the Board any express statutory authority to regulate the use of firearms as required by ORS 166.170.
2. The rule violates the Second Amendment of the United States Constitution by infringing on an individual citizen's right to bear arms.

DATED this 7th day of August, 2009.

ADAMS, DAY, HILL.

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The Oregon Administrative Rules contain OARs filed through July 15, 2009

OREGON UNIVERSITY SYSTEM

DIVISION 22

ACADEMIC FREEDOM

Proscribed Conduct

580-022-0045

Proscribed Conduct

Procedures to impose applicable sanctions may be instituted against any person engaging in any of the following proscribed conduct:

- (1) Obstruction or disruption of teaching, research, administration, disciplinary procedures, or other institutional activities, including the institution's public service functions or other authorized activities on institutionally owned or controlled property;
- (2) Obstruction or disruption interfering with freedom of movement, either pedestrian or vehicular, on institutionally owned or controlled property;
- (3) Possession or use of firearms, explosives, dangerous chemicals, or other dangerous weapons or instrumentalities on institutionally owned or controlled property, unless expressly authorized by law, Board, or institutional rules (for purposes of this section, absence of criminal penalties shall not be considered express authorization);
- (4) Detention or physical abuse of any person or conduct intended to threaten imminent bodily harm or endanger the health of any person on any institutionally owned or controlled property;
- (5) Malicious damage, misuse or theft of institutional property, or the property of any other person where such property is located on institutionally owned or controlled property, or, regardless of location, is in the care, custody or control of an institution;
- (6) Refusal by any person while on institutional property to comply with an order of the president or appropriate authorized official to leave such premises because of conduct proscribed by this rule when such conduct constitutes a danger to personal safety, property, educational, or other appropriate institutional activities on such premises;

Exhibit No. 1
Page No. 1

(7) Unauthorized entry to or use of institutional facilities, including buildings and grounds;

(8) Illegal use, possession, or distribution of drugs on institutionally owned or controlled property;

(9) Inciting others to engage in any of the conduct or to perform any of the acts prohibited herein. Inciting means that advocacy of proscribed conduct that calls on the person or persons addressed for imminent action, and is coupled with a reasonable apprehension of imminent danger to the functions and purposes of the institution, including the safety of persons, and the protection of its property;

(10) Violating the Board's Policy for Intercollegiate Athletics as described in **Section 8** of the **Internal Management Directives**, specifically including the subsection thereof entitled **Code of Ethics**.

[Publications: The publication(s) referred to or incorporated by reference in this rule are available from the agency.]

Stat. Auth.: ORS 351.070

Stats. Implemented: ORS 351.070

Hist.: HEB 3-1978, f. & ef. 6-5-78; HEB 3-1983, f. & ef. 3-17-83; HEB 1-1991, f. & cert. ef. 2-14-91; HEB 1-1993, f. & cert. ef. 2-5-93; HEB 5-1996, f. & cert. ef. 12-18-96

CERTIFICATE OF SERVICE

I certify that on August 7, 2009, I served a true and correct copy of this **Petition For Judicial Determination Of Validity Of Rule** in a sealed envelope on each of the following persons:

Oregon State Board of Higher Education
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Portland State University campus
College of Urban and Public Affairs
Portland, OR 97201
Respondent

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Chancellor's Office
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John Kroger, Attorney General, # 077207
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Attorney for Respondents

CERTIFICATE OF FILING

I certify that on August 7, 2009, I filed, by hand delivery, the original of this **Petition For Judicial Determination Of Validity Of Rule** with the following:

State Court Administrator
Appellate Court Records Section
Supreme Court Building
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