



FACULTY ADVOCATE

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Is Senate Bill 1254 an Illegal Experiment on Human Subjects?

In an article in the *Lewiston Morning Tribune* (June 29), UI biology professor Jack Sullivan expressed strong opinions against Senate Bill 1254, which allows guns in Idaho's college and university classrooms.

Steve Boss, a University of Arkansas professor and a founding member of Arkansans Against Guns On Campus has responded to Sullivan's comments. Before the UA faculty won a waiver to a similar law in their state, Boss was prepared to file the following complaint against the legislation.

- 1) The "guns on campus" law constitutes a very large social experiment involving human subjects.
- 2) The subjects are employees and students of state higher education institutions.
- 3) The subjects have not willingly agreed to be participants in this experiment. Instead, it has been forced on them by legislative fiat.
- 4) The subjects have not given informed consent to be participants.
- 5) There is no reasonable means for the subjects (employees and enrolled students) to opt out of the experiment.
- 6) The safety and well-being of the experimental subjects cannot be guaranteed.
- 7) The experimental protocol has not be reviewed and approved by the Institutional Review Board.
- 8) Given the experimental design outlined above, the

IRB approval would never be granted for this experiment.

9) Implementation of the law thus constitutes an illegal experiment with human subjects and represents institutionalized research misconduct, which is a felony.

10) Implementation of the law at every institution statewide represents conspiracy to commit research misconduct and an illegal experiment using human subjects.

Debate about Faculty Union's Legal Opinion: Ben Onosko Responds to "Don"

Editor's Note: A gun rights advocate by the name of "Don" responded to our legal opinion about faculty options under Senate Bill 1254 on the blog of the *Idaho State Journal*. We have no way of getting permission to distribute his original comments, but our attorney Ben Onosko has included the gist of them in this response, which has been edited. Onosko's memo can be read at www.idaho-aft.org/GunsCampus.pdf

Don argues that posting a no guns sign on a classroom door would violate the new law. This argument rests on the assumption that a no guns sign is a "regulation or prohibition" that actually keeps guns or students out of the classroom. But Don has no basis upon which to make this assumption.

First, my legal memo did not imply that by posting a no guns sign, professors thereby had the right to physically exclude students from the classroom. The sign is to ask for students' compliance; it is not a sign of intention to throw students out of the classroom if they do have a gun.

Second, I think it is a real stretch to say that such a sign would be a “regulation or prohibition.” The UI library has a sign on the front door asking students to be quiet. Is that a “regulation or prohibition” on free speech? Could the UI be sued for violating students’ First Amendment rights for posting such a sign? I’m sure that every time Don goes to a library he makes sure to be as loud as possible just to let everyone around him know that he has a right to free speech, and that he is [determined] to exercise that right. . . .

If the UI passes policies or regulations governing its employees, its employees will usually be bound by those policies. So, I guess we will have to just wait and see exactly what the new rules say before professors will be able to determine exactly what they can and cannot do.

While Don is mostly correct in his assertion that faculty could face sanctions for violations of university policies, his constitutional analysis is completely off-base.

First, he claims that if a student with a gun is banned from a classroom, that student can and should file a federal civil rights lawsuit. . . . I hope Don and that student have lots of money, because you will likely lose your federal rights lawsuit. I’m assuming that Don is talking about a suit under 42 U.S.C. §1983. However, this section is normally used to ensure that federal laws and federal constitutional rights are not violated.

I know of no federal laws that prohibit a university or a faculty member from stopping students from bringing guns into a classroom. So, my best guess is that Don would be filing suit alleging that the student’s Second Amendment right was violated.

This is certainly an argument that could be made; however, I believe that the Supreme Court would disagree with him. In *District of Columbia v. Heller*, the United States Supreme Court said, “nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings.”

This is the Supreme Court interpreting the Second Amendment. The *Heller* and *McDonald* cases are the only two Supreme Court decisions affirming Second Amendment protections, and both of those

cases only involved the issue of persons having guns in their own homes. Since these decisions, pro-gun advocates have asked the Supreme Court to determine whether the Second Amendment protects people who want to carry guns outside their home. At least six different times since *Heller*, the Supreme Court has refused to hear these cases. [Details of these cases have been omitted.]

I disagree with Don that the Second Amendment guarantees people the right to carry guns into classrooms; therefore, I believe that any suit under 42 U.S.C. § 1983 would fail. . . .

Don also appears to suggest that a student might sue faculty for a violation of Article I, Section 11, of the Idaho Constitution (Idaho’s Second Amendment.) As I said in my legal memo, Idaho Courts have not fully delineated the scope of Idaho’s Second Amendment. So it is completely possible that the Idaho Supreme Court could rule that to ban guns on Idaho’s campuses violates Idaho’s Second Amendment.

However, it is also just as likely that Idaho’s Supreme Court would rule that a ban on guns on campuses does not violate Idaho’s Second Amendment because these are “sensitive places.” In support of this, I would also point out to Don that the UI has banned guns for many years.

If the legislature thought that this was unconstitutional, it could have just let someone challenge the ban in court as violating Idaho’s Second Amendment. The fact that such a challenge has never been successfully brought and that the Idaho Legislature had to actually pass SB 1254, could suggest that the legislature knew that the ban did not violate Idaho’s Constitution. . . .

Don also makes the strange argument that the UI has no right to contest or disobey this law because it is a criminal law, as opposed to a civil law. This argument is simply incorrect. First, Don incorrectly states that, “all the cases [Onosko] states supporting the argument for the law not applying to the University of Idaho were civil matters.”

On page 7 of my memo, I cited the case of *Dreps v. Board of Regents*. The issue in that case was whether a criminal law applied to the University. If Don had read the case, he would have learned that the Idaho Supreme Court held that Idaho’s Nepotism Act did not apply to the UI.

Second, and more importantly, this argument misstates and misapplies basic legal principals. The point of my memo was that the UI can, and should, challenge this law as being unconstitutional. Whether a law is constitutional does not depend solely on whether the law is criminal or civil. The UI has just as much right to challenge this law whether the law is civil or criminal. In fact, it is my experience that criminal laws are challenged as being unconstitutional much more often than civil laws. . . .

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