

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS
STATE OF MISSOURI

ZOOLOGICAL PARK SUBDISTRICT)	
OF THE METROPOLITAN PARK)	
MUSEUM DISTRICT,)	
)	Cause No.: 1522-CC09876
Plaintiff-Counterclaim Defendant,)	
)	Division No. 31
vs.)	
)	
JEFFRY K. SMITH,)	
)	
Defendant-Counterclaim Plaintiff.)	

ANSWER TO PETITION FOR TEMPORARY RESTRAINING ORDER,
PRELIMINARY INJUNCTION AND PERMANENT INJUNCTION
AND AFFIRMATIVE DEFENSES AND
COUNTERCLAIM

COMES NOW Defendant, Jeffry K. Smith, by and through counsel, and for his
Answer to Plaintiff's Petition states and avers as follows:

INTRODUCTION

1. Defendant admits that he is from the State of Ohio. Defendant denies that Section 571.107 prohibits the open carry of firearms. Defendant denies that "immediate and irreparable injury, damage or loss will result," as alleged if, visitors are permitted to carry firearms on the Zoo property."

The remainder of Paragraph 1 of Plaintiff's Petition is multiplicitious and conclusory and cannot be either admitted or denied and Defendant is without sufficient information to either admit or deny any remaining allegations and, therefore, all remaining allegations in Paragraph 1 are, therefore, denied.

FACTS AND ALLEGATIONS

2. Defendant admits the allegations contained in Paragraph 2.
3. Defendant is without sufficient information to either admit or deny the allegations contained in Paragraph 3 and therefore, Paragraph 3 is denied.
4. Defendant denies the allegations contained in Paragraph 4.
5. Defendant is without sufficient information to either admit or deny the allegations contained in Paragraph 5 and therefore, Paragraph 5 is denied.
6. Defendant is without sufficient information to either admit or deny the allegations contained in Paragraph 6 and therefore, Paragraph 6 is denied.
7. Defendant is without sufficient information to either admit or deny the allegations contained in Paragraph 7 and therefore, Paragraph 7 is denied.
8. Defendant admits that Zoo has a policy which prohibits visitors from carrying weapons onto Zoo's property. Defendant denies that Zoo's policy is consistent with the laws of the State of Missouri. All remaining allegations in Paragraph 8 are denied.
9. Defendant admits that Zoo has posted signs as alleged. All remaining allegations in Paragraph 9 are denied.
10. Defendant admits that he resides in the State of Ohio. Defendant admits that he has organized and attended gun rights rallies. All remaining allegations contained in Paragraph 10 are denied.
11. Defendant admits that he contacted Zoo and asked questions about its gun

policy. All remaining allegations in Paragraph 11 are denied.

12. Defendant denies the allegations contained in Paragraph 12.

13. Defendant denies the allegations contained in Paragraph 13 based on his denial of Paragraph 12.

14. Defendant admits that he informed Zoo of his intention to carry a handgun on Zoo's premises sometime between June 13 and June 20, 2015. Any remaining allegations in Paragraph 14 are denied.

15. Defendant admits that he created a FaceBook Event named as stated. The remaining allegations contained in Paragraph 15 are denied.

COUNT I: INJUNCTIVE RELIEF

16. Defendant reasserts and incorporates by reference his answers to Paragraphs 1 through 15 of this Answer as though fully set out herein.

17. Defendant denies the allegations contained in Paragraph 17.

18. Defendant denies the allegations contained in Paragraph 18.

19. Defendant denies the allegations contained in Paragraph 19.

20. Defendant denies the allegations contained in Paragraph 20.

21. Defendant denies the allegations contained in Paragraph 21.

22. Defendant denies the allegations contained in Paragraph 22.

23. Defendant denies the allegations contained in Paragraph 23.

24. Defendant denies the allegations contained in Paragraph 24.

25. Defendant denies the allegations contained in Paragraph 25.

26. Defendant denies the allegations contained in Paragraph 26.

WHEREFORE, having fully answered Plaintiffs' Petition, Defendant prays this court enter judgment in his favor, dissolve any existing temporary or preliminary injunction that may be in place and award him his reasonable attorney's fees, costs and such other relief as the court deems just in the premises.

AFFIRMATIVE DEFENSES

COMES NOW Defendant-Counterclaim Plaintiff, and for his affirmative defenses to Plaintiff-Counterclaim Defendant's Petition, states and avers as follows:

1. Defendant denies any and all allegations raised by Plaintiffs except to the extent expressly admitted above.

2. Defendant has a right, granted by the Second Amendment to the United States Constitution as applied to the States through the Fourteenth Amendment to the United States Constitution, to keep and bear arms.

3. Defendant has a right, granted by Article I, Section 23 of the Constitution of Missouri, to keep and bear arms.

4. Defendant has a right, granted by the First Amendment to the United States Constitution as applied to the States through the Fourteenth Amendment to the United States Constitution, to the freedom of speech and of the press and the right to peaceably assemble.

5. Defendant has a right, granted by Article I, Section 8 of the Constitution of Missouri to say, write or publish, or otherwise communicate whatever he will on any

subject.

6. Plaintiff's claims are illegal in that Defendant has the right under both the United States Constitution and the Constitution of Missouri and the Laws of the State of Missouri to keep and bear arms in defense of his home, person, family and property.

7. Plaintiff has failed to state a claim upon which relief can be granted.

8. Plaintiff is estopped from claiming damage to its "image" because the "media storm" that led to the alleged phone calls was created by Zoo. Had Zoo communicated professionally and directly with Defendant, the resulting "notoriety" would never have occurred.

WHEREFORE, having fully answered Plaintiffs' Petition, Defendant prays this court enter judgment in his favor, dissolve any existing temporary or preliminary injunction that may be in place and award him his reasonable attorney's fees, costs and such other relief as the court deems just in the premises.

DEFENDANT'S COUNTERCLAIM
FOR PERMANENT INJUNCTION

COMES NOW Defendant-Counterclaim Plaintiff, Jeffry Smith, and for his Counterclaim for Permanent Injunction against the Zoological Park Subdistrict of the Metropolitan Park Museum District, states and avers as follows:

COUNT I: INJUNCTIVE RELIEF

1. Defendant-Counterclaim Plaintiff (Defendant) is a resident of the State of Ohio.
2. Plaintiff-Counterclaim Defendant (Zoo) is a political subdistrict created under the laws of the State of Missouri.
3. Zoo is located within the City of St. Louis, State of Missouri.
4. The actions complained of herein occurred or are occurring in the City of St. Louis, State of Missouri.
5. Defendant holds a valid concealed-carry endorsement or permit issued by the State of Ohio or a political subdivision of the State of Ohio.
6. Defendant has a right under Amendment 2 to the Constitution of the United States, as applied to the States through the Fourteenth Amendment, to keep and bear arms.
7. Defendant has a right under Article 1, Section 23 of the Constitution of Missouri to keep and bear arms in defense of his home, person, family and property.
8. Defendant has a right under the Revised Statutes of the State of Missouri, Section 571.107 and others, to carry a concealed firearm in the State of Missouri by virtue of his valid concealed-carry endorsement or permit issued by the State of Ohio or a

political subdivision of the State of Ohio, subject to certain exceptions enumerated in the statute.

9. Zoo does not fall under any exception listed in RSMo § 571.107.1(1) through (17).

10. RSMo, Section 571.107 does not regulate the open carry of firearms.

11. Zoo has posted signs, attempting to prohibit any carry of firearms on Zoo property.

12. Zoo has stated that it does not allow either the open or concealed carry of firearms on Zoo property (Policy).

13. Zoo's signs, policy and actions are government actions because Zoo is a political subdistrict created under the laws of the State of Missouri

14. Zoo's signs and Policy infringe on Defendant's rights under the Second Amendment to the United States Constitution as applied to the states through the Fourteenth Amendment.

15. Zoo's signs and Policy infringe on Defendant's rights under Article 1, Section 23 of the Constitution of Missouri.

16. Zoo's signs and Policy infringe on Defendant's rights, granted by the Missouri Legislature in RSMo § 517.107.

17. Defendant requested that Zoo remove the offending signs and that it change its illegal policy to comply with federal and state laws.

18. Zoo has failed and refused to remove its "no gun" signage or change its policy.

19. On June 12, 2015, Zoo, in an attempt to enforce its illegal policy, utilized the Missouri courts and obtained a Temporary Restraining Order, prohibiting Defendant from entering on Zoo's property carrying a firearm, without notice to Defendant.

20. Zoo has threatened to attempt to enforce its policy through police action.

21. Zoo's actions infringing on Defendant's rights are on-going.

22. As a direct result of Zoo's actions Defendant has and continues to suffer denial of his Federal and State Constitutional and Statutory rights.

23. Defendant has and continues to suffer damage as a result of the infringement of his Federal and State Constitutional and Statutory rights.

24. If Zoo is not restrained from infringing upon Defendant's rights, Zoo will continue its illegal behavior and will continue to infringe upon Defendant's rights and the rights of others who are similarly situated.

25. If Zoo is not restrained from infringing upon Defendants rights, Defendant will continue to suffer damage as the result of the denial of his Federal and State Constitutional and Statutory rights.

26. The right of the people to keep and bear arms is an important one and subject to strict scrutiny.

26. Defendant has no adequate remedy at law.

WHEREFORE, Defendant-Counterclaim Plaintiff prays this court enter judgment in his favor and enter an Order restraining and enjoining Zoo and its affiliates from infringing on the rights of Defendant through its "no-firearms" policy and order that the "no-firearms" signs be removed from the Zoo property and that Zoo and its employees,

agents and others acting under it refrain from harassing or otherwise disturbing Defendant in his peaceful exercise of his rights under the Federal and State Constitutions and the Laws of the State of Missouri and for such other orders and the court deem just in the premises.

Respectfully submitted,

J.C. HOGAN& ASSOC., L.L.C.

/s/ Jane C. Hogan

Jane C. Hogan, MBE 38255

5216 Chippewa Street

St. Louis, MO 63109

Telephone: (314) 351-7464

Facsimile: (314) 315-7465

E-mail: HoganAttorney@aol.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing was served on all parties by means of the court's electronic filing system this 9th day of October 2015.

/s/ Jane C. Hogan