

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

ZOOLOGICAL PARK SUBDISTRICT	)	
OF THE METROPOLITAN	)	
PARK MUSEUM DISTRICT,	)	
	)	<b>Cause No.</b>
Plaintiff,	)	
	)	<b>Division No.</b>
vs.	)	
	)	
JEFFRY K. SMITH,	)	
	)	
Defendant.	)	

**THE ZOOLOGICAL PARK SUBDISTRICT  
OF THE METROPOLITAN ZOOLOGICAL PARK MUSEUM  
DISTRICT’S MOTION FOR TEMPORARY RESTRAINING ORDER**

The Zoological Park Subdistrict of the Metropolitan Zoological Park Museum District (“Saint Louis Zoo”), by and through undersigned counsel and pursuant to Rule 92.02(b) of the Missouri Rules of Civil Procedure, moves this Court for a Temporary Restraining Order (“TRO”) against Defendant Jeffry K. Smith (“Smith”) and anyone acting in concert with him or who has knowledge of the TRO. Specifically, Saint Louis Zoo requests a Temporary Restraining Order enjoining Smith (and anyone associated with him or who has notice of such order) from entering upon Saint Louis Zoo property in possession of a firearm or any other weapon capable of lethal use (whether the weapon is possessed openly or concealed). In support of its motion, Saint Louis Zoo states as follows:

**INTRODUCTION**

1. Smith, a gun rights activist from the State of Ohio, has traveled to Missouri to carry firearms into Saint Louis Zoo on or about June 13, 2015 in violation of Saint Louis Zoo’s policy and Missouri law.

2. Saint Louis Zoo seeks a TRO to prevent Smith's threatened acts based on Rule 92.02(b) of the Missouri Rules of Civil Procedure, Missouri statutes, Missouri case law and public policy.

**RULE 92.02 OF MISSOURI'S RULES OF CIVIL PROCEDURE**

3. Based on Rule 92.02(b), a Court shall grant a TRO without notice where: (a) immediate and irreparable injury, loss, or damage will result in the absence of relief; and (b) notice would defeat the purpose of the order.

4. Immediate and irreparable injury, damage or loss will result to Saint Louis Zoo in the absence of injunctive relief as the safety, patronage and image of Saint Louis Zoo will be compromised if visitors are permitted to carry firearms or other weapons on Saint Louis Zoo property – particularly in the context of an intimidating walk through the zoo meant to protest Saint Louis Zoo's policy and the laws of the State of Missouri.

5. Tens of thousands of families and children visit the zoo on a daily basis for education, recreation and amusement. A gun demonstration in the zoo and/or a ruling permitting firearms (or other lethal weapons) to be carried through the zoo will cause a chilling effect on the experience of visiting the zoo and it will significantly harm the mission of Saint Louis Zoo.<sup>1</sup>

6. As evidence of this fact, Saint Louis Zoo's Education Department has received a large number of telephone calls from parents of children who participate in the zoo's educational programs and have learned of Smith's plan. The parents have expressed concern about Smith's challenge to the zoo's policy and will likely remove their children from Saint Louis Zoo's educational programs if firearms are allowed on the campus.

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<sup>1</sup> The mission of Saint Louis Zoo is "[t]o conserve animals and their habitats through animal management, research, recreation, and educational programs that encourage the support and enrich the experience of the public."

7. Providing notice to Smith in advance of seeking the TRO would defeat the purpose of the order. Smith's Facebook Event page states that "The time/date and the exact nature of this challenge may change." If Smith is given notice before the TRO is entered, he and other persons associated with him could move swiftly to enter Saint Louis Zoo property with firearms before the entry of the TRO and, thus, defeat the purpose of the TRO.

### **MISSOURI'S FIREARMS CARRY STATUTE**

8. Saint Louis Zoo property is situated within the City limits of the City of St. Louis.

9. Section 15.130.040 of St. Louis City's Revised Code provides that: "No person, in any place of public accommodation or any public gathering or on any public property, street or thoroughfare, shall carry on or about his person, any firearm, pistol, revolver, shotgun, rifle or springback knife, or other weapon proscribed under Section 564.610 Missouri Revised Statutes, exposed in whole or in part to view." Accordingly, by city ordinance, persons within the city limits of the City of St. Louis at a place of public accommodation, which would include Saint Louis Zoo, are not permitted to openly carry firearms.

10. Effective August 28, 2014, the Missouri State Legislature preempted this St. Louis City Ordinance to the extent the person carrying the firearm has in his or her possession a valid concealed carry endorsement or permit issued by the State of Missouri, or a permit from another state that is recognized by Missouri. *See 21.750.1, RSMo.* ("Preemption Statute"). Based on the Preemption Statute, if a person has a valid conceal carry endorsement or permit, the person can openly carry a firearm in the City of St. Louis.

11. However, another Missouri statute sets forth locations and facilities where persons with concealed carry endorsements or permits are not permitted to carry concealed firearms. *See 571.107.1, RSMo.* ("Carry Statute").

12. In essence, the Carry Statute sets forth locations and facilities where concealed carry endorsements and permits are not valid and, therefore, do not authorize the concealed carrying of a firearm.

13. Because the Preemption Statute allowing the open carry of firearms is premised on a valid concealed carry endorsement/permit, in places where a concealed carry endorsement/permit is not valid, the person who holds an otherwise valid open carry endorsement/permit cannot openly carry his or her firearm in those places.

14. The Carry Statute, therefore, lists seventeen categories of places where a person in the City of St. Louis cannot carry a firearm openly or concealed (“No Gun Zone”). No Gun Zones reflect a legislative policy choice as to areas where firearms are inappropriate.

15. In addition, most of the No Gun Zone categories in the Carry Statute include language indicating that it is permissible for a gun owner to possess his or her firearm in his or her vehicle so long as the firearm is not removed from the vehicle or brandished while the vehicle is on the premises. This language implies that the open carry of a firearm is not permitted on a premises where the concealed carry of the firearm is not permitted, and that any carrying of a firearm outside a vehicle on such premises, openly or concealed, is a violation of the Carry Statute.

16. Saint Louis Zoo fits within at least four of the seventeen No Gun Zone categories, including educational institutions, day care facilities, amusement parks and where a business open to the public chooses to restrict the carrying of firearms by posting signs. *See 571.107.1 (10), (11), (13) and (15).*

**NO GUN ZONE: EDUCATIONAL INSTITUTIONS**

17. One of Saint Louis Zoo’s primary missions is education.

18. As described more fully in the Verified Petition, Saint Louis Zoo operates a licensed pre-school and educational Summer camp programs for children from pre-school through 12<sup>th</sup> grade. It also regularly hosts educational field trips and youth and Scout group outings. Furthermore, Saint Louis Zoo has partnered with The Special School District (“SSD”) of Saint Louis County to provide training, growth and preparation for the world of work to students who receive services from SSD.

19. The children involved in these school programs and outings use the entire zoo campus to enhance their educational experience.

20. Given these facts and the public policy of protecting children in educational environments from the dangers and distractions of firearms, the entire Saint Louis Zoo campus constitutes an elementary/secondary school facility for purposes of Subsection (10) of the Carry Statute.

**NO GUN ZONE: DAY CARE FACILITY**

21. Subsection (11) of the Carry Statute prohibits the carrying of a firearm in “[a]ny portion of a building used as a child care facility . . . .” In the case of Saint Louis Zoo, the entire 90-acre campus, including all of the publicly accessible buildings on the campus, are used by and for the teachers and students of the licensed day care operated by Saint Louis Zoo. Accordingly, under this subsection, the entire zoo property is included in this NO Gun Zone category.

**NO GUN ZONE: AMUSEMENT PARK**

22. Subsection (13) of the Carry Statute prohibits firearms in any gated area of an amusement park.

23. Webster's Dictionary defines "Amusement Park" as: "a commercially operated park having various devices for entertainment (as a merry-go-round and roller coaster) and usually booths for the sale of food and drink."

24. "Amusement ride" is defined by Section 316.203.1, RSMo. (Shows, Circuses, Amusement Buildings and Festivals), as "any of the following which is primarily for the purpose of giving its patrons amusement, pleasure, thrills, or excitement, and which is open to the general public . . . : (a) Any mechanical device that carries or conveys passengers along, around or over a fixed or restricted route of course or within a defined area . . . ; (c) Any tram, open car, or combination of open car or wagons pulled by a tractor or other motorized device . . . ."

25. A Missouri Department of Revenue Regulation dealing with tax exemptions for certain types of organizations refers to a "zoo" as a "place of amusement." *See* 12 CSR 10-110.955(3)(B).

26. Missouri's Department of Transportation regulations define "Amusement parks" as: "A permanent area which is open to the general public for three (3) or more of the following activities: picnicking, hiking, swimming, boating, entertainment rides, food services, etc. In operation more than three (3) months per year." *See* 7 CSR 10-9.020(15)(F)(2).

27. In 1977, the Missouri Supreme Court included "zoos" in a list of examples of "place[s] of amusement." *See Blue Springs Bowl v. Spradling*, 551 S.W.2d 596, 598 (Mo. 1977).

28. In 2008, the Missouri Supreme Court defined the term "place of amusement" as used in Section 144.020(8), RSMo., as "a location in which amusement or recreation activities

comprise more than a *de minimus* portion of the business activities occurring at that location.” See *Michael Jaudes Fitness Edge, Inc. v. Dir. of Revenue*, 248 S.W.3d 606, 609 (Mo. 2008) (emphasis in original).

29. As a comparison, the Dallas Zoo’s website has a frequently asked questions section. One question on the website is: “May I bring a weapon to the zoo?” The answer provided by the Dallas Zoo is: “No. Under state law, the Zoo is considered both an amusement park and an educational institution, so concealed weapons aren’t allowed, even for licensed holders of concealed handgun permits.” See <http://www.dallaszoo.com/plan-your-adventure/faq/>.

30. As supported by the facts in the Verified Petition, Saint Louis Zoo meets the definition of an amusement park. Saint Louis Zoo is a year-round, commercially operated park having numerous entertainment rides (including a merry-go-round, train, and “Dino Safari” 4-D Motion Simulator Ride), and booths for the sale of food and drink. Besides the rides, visitors can picnic and hike on the zoo campus. Moreover, amusement or recreation activities comprise more than a *de minimus* portion of the business activities occurring at that location. Indeed, the animal exhibits themselves are part of the amusement experience of zoos.

31. One of the primary missions of Saint Louis Zoo is to educate the public and encourage its support of the zoo through the amusement and recreation provided by the zoo, which includes attractions such as sea lion shows, concerts, stingray petting and feeding, and movies. As noted in the Verified Petition, because Saint Louis Zoo excels in this mission, it received an award from the **International Association of Amusements Parks and Attractions**. It would seem illogical for the zoo to win an amusement park award if it were not considered an amusement park.

32. Not surprisingly, the Missouri Supreme Court has specifically identified zoos as “places of amusement.”

33. Like the Dallas Zoo, Saint Louis Zoo undoubtedly constitutes an amusement park and educational institution.

#### **NO GUN ZONE: BUSINESS OPEN TO PUBLIC**

34. While Subsection (15) of the Carry Statute begins by addressing private property owners’ rights to prohibit firearms on his or her premises by posting signs, the second sentence of the subsection uses the disjunctive “or” to signal that “any other organization, entity or person” (other than a private organization, entity or person) who opens its business to the public may prohibit firearms on its premises by posting signs. Saint Louis Zoo has posted signs at its entrances which satisfy the size and text requirements for a valid sign under the Carry Statute.

#### **INJUNCTION BOND**

35. According to Rule 92.02(d), no TRO shall issue in a case until the party seeking the injunction shall have executed a bond with sufficient surety to the other party or deposited cash with the court in such sum as the court shall deem sufficient to cover the damages that may be occasioned by the restrained party during the period of the TRO. In this case, Smith would not be expected to be damaged in any way by being prohibited for a short period of time from visiting Saint Louis Zoo with firearms. Therefore, Saint Louis Zoo requests that any bond required for issuance of the TRO in this matter not exceed a cash bond of \$250.00. Saint Louis Zoo has made arrangements for the immediate deposit into the Court registry of such cash bond.

## CONCLUSION

36. Based on the foregoing, Saint Louis Zoo moves this Honorable Court to grant its Motion for Temporary Restraining Order against Defendant Jeffrey K. Smith (“Smith”) and anyone acting in concert with him or who has knowledge of the TRO. Specifically, Saint Louis Zoo requests that Smith (and anyone associated with him or who has notice of such order) be enjoined from entering upon Saint Louis Zoo property in possession of a firearm or any other weapon capable of lethal use (whether the weapon is possessed openly or concealed). Saint Louis Zoo further requests that this matter be set for hearing on Saint Louis Zoo’s Petition for Preliminary Injunction, and for such other and further relief as the Court deems proper.

Respectfully submitted,

THE LOWENBAUM PARTNERSHIP, LLC

/s/ Adam D. Hirtz

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	)	
<b>JEFFRY K. SMITH,</b>	)	
	)	
<b>Defendant.</b>	)	

**TEMPORARY RESTRAINING ORDER**

Based on the Verified Petition of The Zoological Park Subdistrict of the Metropolitan Zoological Park Museum District (“Saint Louis Zoo”), Saint Louis Zoo’s Motion for Temporary Restraining Order and the oral arguments of counsel for Saint Louis Zoo, the Court hereby makes a preliminary finding that the following reasons are sufficient for issuance of this Temporary Restraining Order without notice pursuant to Rule 92.02(b) of the Missouri Rules of Civil Procedure:

1. Saint Louis Zoo’s property is situated within the City limits of the City of St. Louis.
2. The mission of Saint Louis Zoo is “[t]o conserve animals and their habitats through animal management, research, recreation, and educational programs that encourage the support and enrich the experience of the public.”
3. In support of its mission regarding education, Saint Louis Zoo operates a licensed pre-school which utilizes the entire 90-acre campus of Saint Louis Zoo as its classroom; Saint Louis Zoo also holds camps for adults and children from pre-school to grade 12 --- these camps utilize the entire campus of Saint Louis Zoo; and school field trips and Scout and Youth Group

outings at Saint Louis Zoo account for many thousands of children visiting all portions of Saint Louis Zoo on a daily basis throughout the year for educational purposes. As many as seventy (70) buses per day bring children to Saint Louis Zoo.

4. Moreover, for more than 20 years, Saint Louis Zoo has partnered with The Special School District (“SSD”) of Saint Louis County to provide training, growth and preparation for the world of work to students who receive services from SSD – a local public school district that supports the educational needs of children with disabilities. As part of this program, Saint Louis Zoo provides as many as 15 special needs students at a time with real-world work experience and education. The SSD program operates year-round and students of the program work and learn on all parts of Saint Louis Zoo’s campus.

5. In support of the recreational component of its mission, Saint Louis Zoo provides its visitors with walking/hiking trails and dozens of animal exhibits for free. In addition, Saint Louis Zoo offers the following amusement rides / attractions for a fee: (a) a sea lion show; (b) the Conservation Carousel (mechanical merry-go-round); (c) the Zooline Railroad (1.5 mile narrated train rides through Saint Louis Zoo); (d) the “Dino Safari” 4-D Motion Simulator Ride; (e) movies; (f) Safari Walking Tours; (g) Stingrays at Caribbean Cove (involving the feeding and touching of stingrays); (h) Green Screen photo opportunities; and (i) music concerts (Friday night concert series called “Jungle Boogie”; and Summer concert series called “Jammin’ at the Zoo”). Saint Louis Zoo also has concessions serving food and drinks.

6. In 2009, Saint Louis Zoo received a prestigious award from the International Association of Amusements Parks and Attractions.

7. Saint Louis Zoo has a policy which prohibits visitors to Saint Louis Zoo from carrying weapons on Saint Louis Zoo's property.

8. To inform the visitors of Saint Louis Zoo of the policy, Saint Louis Zoo has posted signs at the entrances to its property which state as follows: "No Firearms Or Weapons Allowed On This Property."

9. Defendant Jeffrey K. Smith ("Smith") is a gun rights activist residing in the State of Ohio.

10. On or about May 31, 2015 and thereafter, Smith contacted Saint Louis Zoo to question its policy on prohibiting weapons from being carried on its premises.

11. As part of his communications with Saint Louis Zoo, Smith demanded that Saint Louis Zoo remove the "no weapons" signs from its entrances and change its policy to allow visitors of Saint Louis Zoo to carry firearms on Saint Louis Zoo's property.

12. In response, Saint Louis Zoo informed Smith that it would not change its policy or remove its "no weapons" signs.

13. On June 5, 2015, Smith informed Saint Louis Zoo that it was his intention to travel to Saint Louis Zoo to carry a firearm, openly or concealed, onto Saint Louis Zoo's premises sometime between June 13 and June 20, 2015.

14. Smith has since created a Facebook event page announcing a "Saint Louis Zoo – Firearm Rights Challenge" which he has scheduled for Saturday, June 13, 2015, at 1:30 p.m., at the Saint Louis Zoo (the "protest"). On the day of the protest, Smith is threatening to lead persons of similar ideology to himself on a walk through Saint Louis Zoo's grounds armed with guns in order to challenge the "no weapons" policy.

15. Saint Louis Zoo seeks a TRO to prevent Smith's threatened acts based on Rule 92.02(b) of the Missouri Rules of Civil Procedure, Missouri statutes (including Section 571.107.1, RSMo.), Missouri case law and public policy.

16. Based on Rule 92.02(b), a Court shall grant a TRO without notice where: (a) immediate and irreparable injury, loss, or damage will result in the absence of relief; and (b) notice would defeat the purpose of the order.

17. Immediate and irreparable injury, damage or loss will result to Saint Louis Zoo in the absence of injunctive relief as the safety, patronage and image of Saint Louis Zoo will be compromised if visitors are permitted to carry firearms or other weapons on Saint Louis Zoo property – particularly in the context of an intimidating walk through the zoo meant to protest Saint Louis Zoo's policy and the laws of the State of Missouri.

18. Tens of thousands of families and children visit the zoo on a daily basis for education, recreation and amusement. A gun demonstration in the zoo and/or a ruling permitting firearms (or other lethal weapons) to be carried through the zoo will cause a chilling effect on the experience of visiting the zoo and it will significantly harm the mission of Saint Louis Zoo.

19. As evidence of this fact, Saint Louis Zoo's Education Department has received a large number of telephone calls from parents of children who participate in the zoo's educational programs and have learned of Smith's plan. The parents have expressed concern about Smith's challenge to the zoo's policy and will likely remove their children from Saint Louis Zoo's educational programs if firearms are allowed on the campus.

20. Providing notice to Smith in advance of seeking the TRO would defeat the purpose of the order. Smith's Facebook Event page states that "The time/date and the exact nature of this challenge may change." If Smith is given notice before the TRO is entered, he and

other persons associated with him could move swiftly to enter Saint Louis Zoo property with firearms before the entry of the TRO and, thus, defeat the purpose of the TRO.

**FOR THE FOREGOING REASONS**, it is hereby ordered, adjudged and declared as follows:

Defendant Smith (and anyone acting in concert with him or who has knowledge of this Order) is hereby temporarily restrained and enjoined, beginning upon the filing of a \$ \_\_\_\_\_ cash / surety bond from entering upon Saint Louis Zoo property in possession of a firearm or any other weapon capable of lethal use (whether the weapon is possessed openly or concealed).

This temporary restraining order shall remain in full force and effect through the conclusion of the Preliminary Injunction hearing which is scheduled for June \_\_\_\_, 2015 commencing at \_\_\_\_:\_\_\_\_ \_\_.m. in Division \_\_\_\_ of the Circuit Court of the City of St. Louis, or as otherwise hereafter ordered by the Court.

**SO ORDERED:**

\_\_\_\_\_  
**Circuit Judge, Div. \_\_\_\_\_**  
**Circuit Court of the City of St. Louis**

**Entered this \_\_\_\_\_ day of June, 2015**  
**at \_\_\_\_:\_\_\_\_ \_\_.m.**