

as the concealed carry of firearms at these restaurants is prohibited to the Plaintiff under Virginia Code §18.2-308(J3).

3) Defendant is the Virginia Department of Conservation and Recreation which is the state agency that owns, controls, and maintains Virginia's State Parks and other land under its control.

Jurisdiction

4) Virginia Code § 8.01-184 grants this court the power to issue declaratory judgments. Virginia Code § 8.01-620 grants this court jurisdiction to award injunctions.

Facts

5) The Defendant issues regulations regulating certain activities at State Parks and other lands under its control (4VAC5-30-30), by its statutory grant of authority under Virginia Code § 10.1-104. "Powers of the Department". The Defendant has issued and amended regulation 4VAC5-30-200. "Firearms."

6) Plaintiff initiated and received an official opinion of the Attorney General with the help of Delegate Dick Black on the subject of whether the Defendant exceeded its authority in issuing a regulation prohibiting, within State Parks, the carrying of concealed handguns by holders of valid permits. The Attorney General opined that the Defendant did exceed its statutory authority in an official opinion released on September 9, 2002. Plaintiff tried to visit Leesylvania State Park in Prince William County shortly after the public release of the opinion. Plaintiff was told by the Leesylvania Park Ranger that he was forbidden to enter the park with a concealed handgun despite the ranger's knowledge of the Attorney General opinion that they had no authority to bar the plaintiff from the premises. Plaintiff complied with that refusal to admit. The Defendant eventually amended

regulation 4VAC5-30-200. The current regulation still adversely affects the Plaintiff to enjoy the full resources of Virginia's State Parks.

7) Plaintiff visits State Parks while carrying his handgun for lawful purposes through his statutory granted privileged concealed handgun permit issued by this court under Virginia Code §18.2-308(D). The Plaintiff cannot visit State Parks exercising his constitutional right to keep and bear arms through the unconcealed carrying of his handgun which is currently prohibited by 4VAC5-30-200. Plaintiff is barred from enjoying the full resources of Virginia State Parks that is open to the general public while exercising his constitutional right.

8) Douthat Lake View Restaurant at Douthat State Park has an ABC License for on-premises consumption of alcohol (ABC License # 8236). Virginia Code §18.2-308(J3) prohibits the plaintiff from being on the premises of the Douthat Lake View Restaurant while carrying a concealed handgun. Plaintiff is barred from enjoying the full resources of Virginia State Parks that is open to the general public while exercising his statutory right.

COUNT I. –Violation of Plaintiff's Constitutional Rights

9) Paragraphs 1 through 8 are realleged and incorporated herein by reference.

10) By carrying an unconcealed handgun into State Parks, Plaintiff is exercising a right conferred by the Constitution of Virginia; Article I, Section 13.

11) Defendant cannot prohibit an act authorized by the Constitution of Virginia.

12) Plaintiff has the right to choose whether he exercises his constitutional right to carry unconcealed or his state granted privilege to carry concealed to facilitate his right to self defense.

13) Plaintiff has the right to a well regulated militia, composed of the body of the people, trained to arms as the proper, natural and safe defense of the free state of Virginia.

14) Regulation 4VAC5-30-200 is unconstitutional as applied to Plaintiff as it violates the Plaintiff's constitutional right under Article I, Section 13, of the Virginia Constitution.

COUNT II. – No Authority to Regulate Concealed Weapons

- 15) Paragraphs 1 through 14 are realleged and incorporated herein by reference.
- 16) The General Assembly created the law on concealed weapons in 1838 (now known as §18.2-308) and has not relinquished its authority or the control of who may legally possess concealed weapons to the Defendant.
- 17) The Defendant has no statutory authority under § 10.1-104 to regulate the carrying of concealed weapons by valid concealed weapons permit holders.
- 18) In carrying a handgun into State Parks, the Plaintiff is exercising a right conferred by state law.
- 19) Regulation 4VAC5-30-200 is invalid as it applies to Plaintiff as the Defendant has no authority to regulate concealed weapons.

COUNT III. – No Authority to Pass or Maintain Regulations Inconsistent with State Law

- 20) Paragraphs 1 through 19 are realleged and incorporated herein by reference.
- 21) In carrying a handgun into State Parks, the Plaintiff is exercising a right conferred by state law.
- 22) Regulation 4VAC5-30-200 is inconsistent with state law *including but not limited to* §18.2-287.4.
- 23) Regulation 4VAC5-30-200 is invalid as it applies to Plaintiff as the Defendant has no authority to pass *or maintain* regulations inconsistent with state law.

Wherefore, Plaintiff prays that this court:

- 1) Declare that Regulation 4VAC5-30-200 is unconstitutional as applied to Plaintiff and enjoin Defendant and his employees, agents, and representatives from enforcing Regulation 4VAC5-30-200.

- 2) In the alternative, declare that Regulation 4VAC5-30-200 is invalid as applied to plaintiff and enjoin Defendant and his employees, agents, and representatives from enforcing Regulation 4VAC5-30-200 as to Plaintiff.

- 3) Award costs, including attorney's fees.

Respectfully Submitted

By: _____
Rudolph DiGiacinto