

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF FAIRFAX

RUDOLPH DIGIACINTO,)
)
 Plaintiff,)
)
 v.) Civil Action No. 2008-14054
)
 THE RECTOR AND VISITORS OF)
 GEORGE MASON UNIVERSITY,)
)
 Defendant.)

**DEFENDANT'S ANSWER, GROUNDS OF DEFENSE
AND AFFIRMATIVE DEFENSES**

The Defendant, The Rector and Visitors of George Mason University ("University"), by counsel, submits this Answer, Grounds and Affirmative Defenses to Plaintiff, Rudolph DiGiacinto's Bill of Complaint and asks that this Honorable Court to deny the relief requested by the Plaintiff and enter judgment in favor of the Defendant.

The following numbered paragraphs correspond to the numbered paragraphs listed in the Bill of Complaint. To the extent there are headings, sub-headings, footnotes, introduction paragraphs and relief requested clauses that are not numbered, the Defendant denies any allegation or relief requested therein.

1. The allegation contained in Paragraph 1 calls for a legal conclusion to which the University is not required to respond. To the extent a response is required, the University denies the allegation.
2. It is admitted that Mr. DiGiacinto is not a student. The University is without sufficient information to admit or deny: a) that Mr. DiGiacinto is a resident of Fairfax County, Virginia; b) that Mr. DiGiacinto is the founder of the website

“Virginia1774.org”; c) the website’s purpose; d) the origin of the documents found on the website; e) that Mr. DiGiacinto visits and utilizes the University’s campus and resources; f) Mr. DiGiacinto attended the national symposium on “Firearms Law and the Second Amendment”; g) Mr. DiGiacinto has obtained a license to carry a concealed handgun; and h) the handgun he carries holds more than twenty (20) rounds of ammunition. To the extent a response is required, the University denies the allegation. Moreover, the allegation that Mr. DiGiacinto on a daily basis exercises his constitutional right to keep and bear arms by carrying his unconcealed handgun in places open to the public calls for a legal conclusion to which the University is not required to respond. To the extent a response is required, the University denies the allegation.

3. It is admitted that the University maintains campuses, buildings and facilities in Fairfax, Arlington, Prince William and Loudoun County. It is denied that The Rector and Visitors of George Mason University is an educational institution that owns, controls, and maintains George Mason University. The power and duties of The Rector and Visitors of George Mason University are described in Virginia Code §§ 23-91.24 – 23.91.33.
4. The allegation contained in Paragraph 4 calls for a legal conclusion to which the University is not required to respond. To the extent a response is required, the University denies the allegation.
5. The allegation contained in Paragraph 5 calls for a legal conclusion to which the University is not required to respond. To the extent a response is required, the University denies the allegation.

6. The allegation contained in Paragraph 6 calls for a legal conclusion to which the University is not required to respond. To the extent a response is required, the University denies the allegation.
7. It is admitted that the University promulgated regulation 8 VAC 35-60-20. It is denied the regulation states: "Possession or carrying of any weapon by any person, except a police officer, is prohibited on university property in academic buildings, administrative office buildings, student residence buildings, and while attending sporting, entertainment or educational events. Entry upon the aforementioned university property in violation of this prohibition is expressly forbidden." The current regulation reads as follows: "Possession or carrying of any weapon by any person, except a police officer, is prohibited on university property in academic buildings, administrative office buildings, student residence buildings, dining facilities, or while attending sporting, entertainment or educational events. Entry upon the aforementioned university property in violation of this prohibition is expressly forbidden."
8. The allegations in this paragraph refer to Attorney General Opinions which are documents that speak for themselves and call for legal conclusions to which a response is not required. To the extent a response is required, the University denies the allegations.
9. The allegations in this paragraph refer to the Virginia Administrative Code and call for legal conclusions to which a response is not required.
10. It is admitted that Mr. DiGiacinto sent a letter on or about September 21, 2008, to Michael Lynch, Police Chief of the University.

11. It is admitted that Mr. Lynch responded to Mr. DiGiacinto on or about September 26, 2008, via email.
12. The allegation contained in Paragraph 12 calls for a legal conclusion to which the University is not required to respond. To the extent a response is required, the University denies the allegation.
13. The University reincorporates its responses to Paragraphs 1 through 12 above.
14. The allegation contained in Paragraph 14 calls for a legal conclusion to which the University is not required to respond. To the extent a response is required, the University denies the allegation.
15. The allegation contained in Paragraph 15 calls for a legal conclusion to which the University is not required to respond. To the extent a response is required, the University denies the allegation.
16. The allegation contained in Paragraph 16 calls for a legal conclusion to which the University is not required to respond. To the extent a response is required, the University denies the allegation.
17. The allegation contained in Paragraph 17 calls for a legal conclusion to which the University is not required to respond. To the extent a response is required, the University denies the allegation.
18. The allegation contained in Paragraph 18 calls for a legal conclusion to which the University is not required to respond. To the extent a response is required, the University denies the allegation.

19. The allegation contained in Paragraph 19 calls for a legal conclusion to which the University is not required to respond. To the extent a response is required, the University denies the allegation.
20. The allegation contained in Paragraph 20 calls for a legal conclusion to which the University is not required to respond. To the extent a response is required, the University denies the allegation.
21. The allegation contained in Paragraph 21 calls for a legal conclusion to which the University is not required to respond. To the extent a response is required, the University denies the allegation.
22. The allegation contained in Paragraph 22 calls for a legal conclusion to which the University is not required to respond. To the extent a response is required, the University denies the allegation.
23. The allegation contained in Paragraph 23 calls for a legal conclusion to which the University is not required to respond. To the extent a response is required, the University denies the allegation.
24. The allegation contained in Paragraph 24 calls for a legal conclusion to which the University is not required to respond. To the extent a response is required, the University denies the allegation.
25. The University reincorporates its responses to Paragraphs 1 through 24 above.
26. The allegations in this paragraph refer to the Virginia Constitution which call for legal conclusions to which a response is not required.

27. The allegation contained in Paragraph 27 calls for a legal conclusion to which the University is not required to respond. To the extent a response is required, the University denies the allegation.
28. The allegation contained in Paragraph 28 calls for a legal conclusion to which the University is not required to respond. To the extent a response is required, the University denies the allegation.
29. The allegation contained in Paragraph 29 calls for a legal conclusion to which the University is not required to respond. To the extent a response is required, the University denies the allegation.
30. The allegation contained in Paragraph 30 calls for a legal conclusion to which the University is not required to respond. To the extent a response is required, the University denies the allegation.
31. The University reincorporates its responses to Paragraphs 1 through 30 above.
32. The allegation contained in Paragraph 32 calls for a legal conclusion to which the University is not required to respond. To the extent a response is required, the University denies the allegation.
33. The allegations in this paragraph refer to the Virginia Code which call for legal conclusions to which a response is not required.
34. The allegations in this paragraph refer to the Virginia Code which call for legal conclusions to which a response is not required.
35. The allegations in this paragraph refer to the Virginia Administrative Code which call for legal conclusions to which a response is not required.

36. The allegation contained in Paragraph 36 calls for a legal conclusion to which the University is not required to respond. To the extent a response is required, the University denies the allegation.
37. The allegation contained in Paragraph 37 calls for a legal conclusion to which the University is not required to respond. To the extent a response is required, the University denies the allegation.
38. The allegation contained in Paragraph 38 calls for a legal conclusion to which the University is not required to respond. To the extent a response is required, the University denies the allegation.
39. The allegation contained in Paragraph 39 calls for a legal conclusion to which the University is not required to respond. To the extent a response is required, the University denies the allegation.

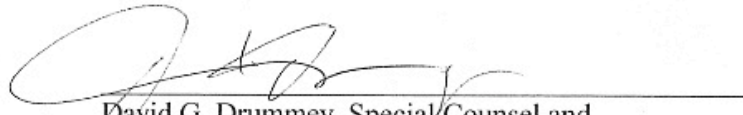
AFFIRMATIVE DEFENSES

1. The Bill of Complaint fails to state a claim against the Defendant upon which relief may be granted.
2. Plaintiff's claims are barred, in whole or part, by the doctrine of sovereign immunity.
3. Plaintiff's claims are barred, in whole or part, because Plaintiff lacks standing.
4. Plaintiff's claims are barred, in whole or part, because the University has been given the authority to issue regulations applicable to its students, employees and general public.
5. Plaintiff's claims are barred, in whole or part, because Plaintiff's federal and state constitutional rights have not been infringed upon.

6. Plaintiff's claims are barred, in whole or part, because the Second Amendment to the United States Constitution has not been incorporated to apply to states action.
7. Plaintiff's claims are barred, in whole or part, because Plaintiff has not plead and cannot demonstrate any harm or reasonable risk of harm in exercising his constitutional rights.
8. Plaintiff's claims are barred, in whole or part, because Plaintiff has not suffered any harm.
9. Plaintiff's claims are barred, in whole or part, because the regulation in question is narrowly tailored to achieve a legitimate and compelling government objective in providing a safe teaching and learning environment for its students and invitees.

WHEREFORE, having fully answered the Bill of Complaint, the Defendant, The Rector and Visitors of George Mason University, respectfully requests that the same be dismissed with prejudice.

Respectfully submitted,



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