



NOV 07 2003

MARIANO V. FAVAZZA  
CLERK, CIRCUIT COURT  
DEPUTY

TWENTY-SECOND JUDICIAL CIRCUIT OF MISSOURI BY \_\_\_\_\_

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PRESIDING JUDGE

ST. LOUIS CIRCUIT COURT  
FOR IMMEDIATE RELEASE  
NOVEMBER 7, 2003

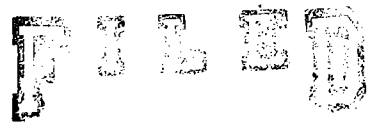
**TWENTY-SECOND JUDICIAL CIRCUIT**

**PRESS RELEASE**

On November 7, 2003, the Twenty-Second Judicial Circuit Court, through Judge Steven R. Ohmer, entered a Judgment and Order granting a Permanent Injunction of the law commonly known as "Conceal and Carry" or "License to Carry."

Judge Ohmer has found and declared that this Law violates Article I, Section 23 of the Missouri Constitution and is therefore unconstitutional. Judge Ohmer further ordered that the \$250,000.00 secured bond shall remain in full force and effect pending any appellate review of this decision.

Judge Ohmer is constrained by the code of Judicial Conduct and the pending status of this case from providing any additional information or from commenting any further. A copy of Judge Ohmer's ruling is available through Circuit Clerk Mariano V. Favazza.



NOV 07 2003

MISSOURI CIRCUIT COURT  
TWENTY-SECOND JUDICIAL CIRCUIT  
(CITY OF ST. LOUIS)

MARIANO V. FAVAZZA  
CLERK, CIRCUIT COURT  
BY \_\_\_\_\_ DEPUTY

ALVIN BROOKS, et al., )  
 )  
 Plaintiffs )  
 )  
 vs. ) Cause No. 034-0425  
 )  
 STATE OF MISSOURI, et al., ) Division No. 2  
 )  
 Respondents. )

**JUDGMENT AND ORDER**

On this 23<sup>rd</sup> day of October, 2003, the Plaintiff's Petition for Declaratory Judgment and Permanent Injunctive Relief was called. Plaintiffs' appeared by and through counsel, Burton Newman and Richard C. Miller. Defendant, State of Missouri, appeared by and through counsel, Alana M. Barragan-Scott, Rex Burlison and Paul Wilson. Defendant, Sheriff City of St. Louis, appeared by and through counsel, Gordon D. Schweitzer, Jr., and Michael O'Reilly. Intervenor, Bulls Eye, L.L.C., appeared by and through counsel, Peter von Gontard. Amicus Curiae National Rifle Association of America, Inc., appeared by and through counsel, Michael Minton and Richard Cassetta. Evidence adduced, legal memorandum submitted and arguments of counsel presented. The Court also reviewed memorandum filed by Kevin L. Jamison and Don Hamrick. The cause was duly heard and submitted.

This Court, after careful review and consideration of the entire record and due deliberation, makes the following findings of fact and conclusions of law:

1. On October 9, 2003, Defendants' Motion to Transfer Venue was heard and denied. The Plaintiffs had filed an Amended Verified Petition, adding the Sheriff of the

City of St. Louis as a Defendant, and therefore, venue was proper in the City of St. Louis under State ex rel. Missouri Dept. of Natural Resources v. Roper, 824 S.W. 2<sup>nd</sup> 901 (Mo. banc 1992). The Court further found that this joinder was not pretensive as the Sheriff of the City of St. Louis has specific duties and responsibilities under the law in question.

2. This Court has jurisdiction.

3. On October 10, 2003, Intervenor Bulls Eye, L.L.C.'s Motion to Intervene was called, heard and granted; and Plaintiff's Motion For A Preliminary Injunction was heard. Evidence was adduced including the testimony of Geri Stephens. Arguments were presented. This Court, finding a probability of success on the merits on the basis of Article I, Section 23 of the Missouri Constitution, therefore entered its Preliminary Injunction enjoining the enforcement of §§50.535, 571.030 and 571.024 (House Bills No. 349, 120, 136 and 328 92<sup>nd</sup> General Assembly commonly known as the "Conceal and Carry" or "License to Carry" Law. The Court further ordered that the Plaintiffs' post a Two Hundred Fifty Thousand Dollar (\$250,000.00) secured bond, pursuant to Mo. Sup. Ct. Rule 92.02(d).

4. On October 23, 2003, Amicus Curiae National Rifle Association of America, Inc's. Motion to file Amicus Curiae Brief was called, heard and granted. Evidence was presented on the request for a Permanent Injunction. Stipulations were made. The following witnesses testified: Captain Phillip Eric Moran of Jackson County, Sheriff Jack L. Merrit of Greene County, Sheriff John W. Page of Camden County and Sheriff John Dwight Jordan of Cape Girardeau County. Evidence was adduced. Arguments and briefs were presented. Plaintiffs' Verified Motion To Amend pleadings is hereby denied. The excellent briefs and arguments of counsel have crystallized the issues for this Court.

5. Plaintiffs argue that the law should be enjoined on five (5) grounds: (i) violation of the Hancock Amendment - Article X, Section 21 of the Missouri Constitution; (ii) violation of Article III, Section 1 of the Missouri Constitution; (iii) violation of Article I, Section 1 of the Missouri Constitution; (iv) void for vagueness; and (v) violation of Article I, Section 23 of the Missouri Constitution.

6. Defendants argue that the law is constitutional and a valid legislative exercise by the General Assembly of its regulatory powers.

7. The State of Missouri does not contest the right of each of the individual Plaintiffs to litigate the claims raised in their individual capacities. The Court finds that the individual Plaintiffs have standing as individual residents, Missouri citizens and taxpayers to litigate these claims. However, none have standing to litigate these matters in their official capacities and to that extent are dismissed with prejudice. Plaintiff, Institute for Peace and Justice, lacks any standing and its claim is dismissed with prejudice. Missouri Health Care Assoc. v. Attorney General, 953 S.W.3d 617, 620 (Mo. banc 1997) and State ex rel. Williams v. Marsh, 626 S.W.2d 223, 227 (Mo. banc 1982).

HANCOCK AMENDMENT - ARTICLE X, SECTION 21  
of the MISSOURI CONSTITUTION

8. The Hancock Amendment requires an appropriation for statutory enactments which: (i) establish a new activity or service, or an increase in the level of any activity or service beyond that required by existing laws; and, (ii) results in increased costs. The Plaintiffs bear the heavy burden to overcome the presumption of constitutionality afforded the law, and to establish that it “clearly and undoubtedly” violates the letter of Article X, Section 21. Miller v. Director of Revenue, 719 S.W.2d 787 (Mo banc 1986).

It is certainly questionable whether this law establishes a new activity on the part of existing Sheriffs' duties. See County of Jefferson v. Quick Trip Corp., 912 S.W.2<sup>nd</sup> 487, 492 (Mo banc 1995). However, there is no evidence to support the proposition that the law will result in increased costs to the Sheriffs' offices of the State. It is clear that the One Hundred Dollar (\$100.00) application fee will be more than adequate to cover any increased costs. Therefore, this funding mechanism of the application and renewal fees under the law adequately satisfy the Hancock Amendment. Accordingly, Plaintiffs' challenge to the law under the Hancock Amendment - Article X, Section 21 is hereby DENIED.

ARTICLE III, SECTION I  
of the MISSOURI CONSTITUTION

9. Plaintiffs argue that the law violates Article III, Section I of the Missouri Constitution because it exceeds the police power. "Unlike the Congress of the United States, which has only the power delegated to it by the U.S. Constitution, the legislative power of Missouri's Legislature is plenary unless it is limited by some other provision of the Constitution." Bd. of Educ. of the City of St. Louis v. City of St. Louis, 879 S.W. 2<sup>nd</sup> 530, 532-533 (Mo. banc 1999). "Any constitutional limitation, therefore must be strictly construed in favor of the power of the General Assembly....[and the] [d]eference due the General Assembly requires that doubt be resolved against nullifying its action if it is possible to do so by any reasonable construction of that action or by any reasonable construction of the Constitution." Id.

10. Regulation of the carrying of firearms and other dangerous weapons is an exercise of the State's police power. State v. Horne, 622 S.W.2d 956 (Mo. 1981). The

enactment of this legislation is clearly within the broad powers of the legislature to secure the peace, comfort, safety, health and welfare of the people of the State of Missouri.

11. This case is not about the propriety or impropriety of concealed weapons. “It is not the Court’s province to question the wisdom, social desirability or economic policy underlying a statute as these are matters for the legislature’s determination.” State ex rel. Dalton v. Miles Laboratories, Inc., 282 S.W.2d 564, 574 (Mo. banc 1955). “When the legislature, acting within its constitutional orbit, has declared the public policy of the state, ‘such declared policy is sacred ground which we [the courts] may not invade’”. State v. Dunbar, 230 S.W. 2d 845, 849 (1950).

12. Accordingly, this Court finds that the General Assembly acted within its inherent power under Article III, Section I of the Missouri Constitution and Plaintiffs’ challenge thereto is hereby DENIED.

ARTICLE I, SECTION I  
of the MISSOURI CONSTITUTION

13. Plaintiffs argue that the law violates Article I, Section I of the Missouri Constitution in that the law is contrary to the will of the voters as expressed in the 1999 Referendum. The General Assembly, whose members are elected by the people of their respective legislative districts, voted to enact the law after considerable debate and an historic override of the Governor’s veto. “The General Assembly, unless restrained by the Constitution, is vested in its representative capacity with all the primary power of the people.” Three Rivers Junior College District of Poplar Bluff v. Statler, 421 S.W.2d 235, 238 (Mo. banc 1967). There is certainly no evidence to support the proposition that the legislature somehow acted improperly in its procedures of passing this law. This Court has the greatest respect and deference to the actions of the General Assembly.

Accordingly, the Court finds that the Plaintiffs' challenge to the law under Article I, Section I of the Missouri Constitution is hereby DENIED.

#### VOID FOR VAGUENESS

14. Plaintiffs' further claim that the law must fail on vagueness grounds. The vagueness doctrine is rooted in fundamental fairness. See Colten v. Kentucky, 407 U.S. 104, 110, 92 S. Ct. 1953, 1957 (1972). It is designed to give individuals notice of proscribed content and to protect them against "arbitrary and discriminatory" enforcement. State v. Entertainment Ventures I, Inc., 44 S.W.3d 383, 386. Accordingly, "[n]either absolute certainty nor impossible standards of specificity are required" for a statute to withstand scrutiny. State v. Ellis, 853 S.W.2d 440, 447 (Mo. banc 1993). A statute is impermissibly vague only if it fails to provide "a person of ordinary intelligence a reasonable opportunity to learn what is prohibited." State v. Entertainment Ventures I, Inc., 44 S.W.2d 383, 386 (Mo. banc 2001).

The law is what it is and this Court does not find it to be void due to vagueness. Accordingly, Plaintiff's claim on vagueness grounds is DENIED.

#### ARTICLE I, SECTION 23 of the MISSOURI CONSTITUTION

15. The crux of this case is the application and meaning of Article I, Section 23 of the Missouri Constitution to the "Conceal and Carry" or "License to Carry" Law.

Article I, Section 23 reads as follows:

"That the right of every citizen to keep and bear arms in defense of his home, person and property, or when lawfully summoned in aid of the civil power, shall not be questioned; but this shall not justify the wearing of concealed weapons."

16. Is this constitutional provision a check on the inherent and plenary power of the General Assembly to enact the “Conceal and Carry” Law or “License to Carry” Law?

OR

Is this constitutional provision a recognition of the authority of the General Assembly to regulate the right to bear arms through the “Conceal and Carry” or “License to Carry” Law?

17. Plaintiffs’ argue that the Law violates Article I, Section 23 of the Missouri Constitution and is a prohibition to the enactment of such laws by the General Assembly. Defendants’ counter that the Law is valid and that Article I, Section 23 of the Missouri Constitution merely recognizes the reservation of power to the General Assembly to regulate the time, place and manner in which arms may be borne.

18. Legislation is entitled to a strong presumption that it is constitutional, Missouri Libertarian Party v. Conger, 88 S.W.3d 446, 447 (Mo. banc 2002), because the courts “ascribe to the General Assembly the same good and praiseworthy motivation as inform [the courts’] decision – making processes,” Hammerschmidt v. Boone County, 877 S.W. 2d, 98, 102 (Mo banc 1994). The constitutional “separation of powers” doctrine provides the foundation for the respect between separate, co-ordinate branches of state government. See Wilson v. Washington County, 247 S.W. 185, 187 (Mo. 1992) wherein the court held that courts must keep in mind that the legislature has power to make laws subject only to the constitution. Thus, if the question of constitutionality is “fairly debatable” the courts have long respected the legislature’s province to make such determinations – even if in the Court’s opinion, “the conclusion of the legislature is an erroneous one.” Poole & Creber Market Co. v. Breshears, 125 S.W.2d 23, 30-31 (Mo.



1939). The Court is “obligated” to uphold legislative enactments unless the constitutionality is “clearly demonstrated.” Penner v. King, 695 S.W. 2d 887, 889 (Mo. banc 1985).

19. One who attacks a statute claiming it violates the constitution “bears an extremely heavy burden.” Linton v. Missouri Veterinary Medical Board, 988 S.W.2d 513, 515 (Mo. banc 1999) (citations omitted). To overcome this burden, the assailant must show that the legislation “clearly and undoubtedly contravenes the constitution” and “plainly and palpably affronts fundamental law embodied in the constitution.” Etling v. Westport Heating & Cooling Svcs., Inc., 92 S.W. 3d 771, 773 (Mo banc 2003). “Constitutional restrictions ought not to be held to apply if there exists any reasonable doubt in the judicial mind as to a conflict.” Wilson v. Washington County, 247 S.W. 185, 187 (Mo. 1922). See also, St. Louis Board of Education v. Shannon, 640 S.W.2d 121, 122 (Mo. banc 1982). Historically, the Courts have striven to avoid an interpretation of the constitution that “will limit or cripple legislative enactments any further than what was necessary by the absolute requirements of the law.” Carmack v. Director, Missouri Department of Agriculture, 945 S.W. 2<sup>nd</sup> 956, 959 (Mo. banc 1997).

20. Moreover, the legislative power of the General Assembly is “plenary and residual.” Penner v. King, 695 S.W.2d 887, 889 (Mo banc 1985), citing State ex rel. Holekamp v. Holekamp Lumber Co., 340 S.W. 2d 678 (Mo banc 1960). Thus, the legislature, “vested in its representative capacity with all the primary power of the people .... has the power to enact any law not prohibited by the federal or state constitution.” Three Rivers Junior College Dist. of Poplar Bluff v. Statler, 421 S.W. 2d 235, 237-238 (Mo banc 1967) (and citations therein).

21. There exist many basic rules of statutory construction which apply equally when construing a constitutional provision. Resort to these rules is proper only when the constitutional provision subject to interpretation is unclear. Lagares v. Camdenton R-III School Dist., 68 S.W.3d 518, 525 (Mo. banc 2002). In those instances in which the language is clear there can be no resort to the “tools” of construction. State ex rel. Heimberger v. Bd. of Curators of University of Missouri, 188 S.W. 128, 130-131 (Mo banc 1916). Instead, the courts consider the words used “in their plain and ordinary meaning.” Lagares v. Camdenton R-III School Dist., 68 S.W. 3d 518, 525 (Mo. banc 2002).

22. Additionally, a constitutional provision is “interpreted according to the intent of the voters who adopted it.” Conservative Federation of Missouri v. Hanson, 994 S.W.2<sup>nd</sup> 27, 30 (Mo banc 1999). When construing a constitutional provision, a “court must undertake to ascribe to the words of a constitutional provision the meaning that the people understand them to have been when the provision was adopted.” Farmer v. Kinder, 89 S.W.3d 447, 452 (Mo. banc 2002) (citation omitted). The meaning understood by the delegates is ascertained from the “ordinary and usual meaning given the words of the provision.” Id.

23. The words of Article I, Section 23 of the Missouri Constitution are simple and easily read, but what do they mean? Also, what are the “plain and ordinary” meaning of the words? That is not so simple. While the words are simple and clear, their meaning in the context of the Constitution is not definitive. This Court never said or implied anything to the contrary. Consequently, this Court must review a variety of sources and

historical material in order to determine the meaning of these words in their constitutional context.

24. Firstly, a review of other state constitutional provisions is informative. Some are clearer than others on this issue:

Florida Const., Art I, Section 8(a) – “The right of the people to keep and bear arms in defense of themselves and of the lawful authority of the state shall not be infringed, except that the manner of bearing arms may be regulated by law.”;

Georgia Const. Art. I, Section I, Paragraph VIII - “The right of the people to keep and bear arms shall not be infringed, but the General Assembly shall have power to prescribe the manner in which arms may be borne.”;

Idaho Const. Art. I, Section 11 - “The people have the right to keep and bear arms, which right shall not be abridged; but this provision shall not prevent the passage of laws to govern the carrying of weapons concealed on the person ....”

Kentucky Const. Art. I, Section 7 - “All men are, by nature, free and equal, and have certain inherent and inalienable rights, among which may be reckoned; .... 7<sup>th</sup>: The right to bear arms in defense of themselves and the state, subject to the power of the General Assembly to enact laws to prevent persons from carrying concealed weapons.”;

Louisiana Const., Art. I, Section 11 – “The right of each citizen to keep and bear arms

shall not be abridged, but this provision shall not prevent the passage of laws to prohibit the carrying of weapons concealed on the person.”;

Mississippi Const., Art. III, Section 12 - “The right of every citizen to keep and bear arms in defense of his home, person, or property, or in aid of the civil power when thereto legally summoned shall not be called in question, but the legislature may regulate or forbid carrying concealed weapons.”;

North Carolina Const. Art. I, Section 30 - “A royal regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed.... nothing herein shall justify the practice of carrying concealed weapons, or prevent the General Assembly from enacting penal statutes against that practice.”;

Oklahoma Const. Art. II, Section 26 - “The right of a citizen to keep and bear arms in defense of his home, person, or property, or in aid of the civil power, when thereinto legally summoned, shall never be prohibited; but nothing herein

contained shall prevent the legislature from regulating the carrying of weapons.”;

Tennessee Const. Art. I, Section 26 - “

That the citizens of this State have a right to keep and to bear arms for their common defense; but the Legislature shall have power, by law, to regulate the wearing of arms with a view to prevent crime.”;

Texas Const. Art. I, Section 23 -

“Every citizen shall have the right to keep and bear arms in the lawful defense of himself or the state; but the Legislature shall have power, by law, to regulate the wearing of arms, with a view to prevent crime.”;

Utah Const. Art. I, Section 6 -

“The individual right of the people to keep and bear arms for security and defense of self, family, others, property, or the State, as well as for other lawful purposes shall not be infringed; but nothing herein shall prevent the Legislature from defining the lawful use of arms.”

Colorado Const. Art. II, Section 13 -

“The right of no person to keep and bear arms in defense of his home, person and property, or in aid of the

Civil power when thereto legally summoned, shall be called in question; but nothing herein contained shall be construed to justify the practice of carrying concealed weapons.”;

Montana Const. Art. II, Section 12 -

“The right of any person to keep or bear arms in defense of his home, person, and property, or in aid of the Civil power when thereto legally summoned, shall not be called in question, but nothing herein contained shall be held to permit the carrying of concealed weapons.”;

New Mexico Const. Art. II, Section 6 -

“No law shall abridge the right of the citizen to keep and bear arms for security and defense, for lawful hunting and recreational use and for other lawful purposes, but nothing herein shall be held to permit the carrying of concealed weapons. No municipality or county shall regulate, in any way, an incident of the right to keep and bear arms.”

While a review of these provisions are helpful and informative it certainly is not conclusive nor is it controlling. This Court has not discovered any definitive ruling on the issue before the court. This review simply clarifies the difficult issue facing this court.

25. Secondly, a review of Missouri case law is also helpful but not conclusive.

State v. Wilforth, 74 Mo. 528 (1881) held that the law banning the carrying of weapons concealed was valid and cited the precursor Missouri Constitutional provision to Article I, Section 23 (Section 17, Article II) in support of that conclusion. In State v. Shelby, 2 S.W. 468 (Mo. 1886), the Court again upheld the banning of concealed weapons stating that the law was “a reasonable regulation of the use of ... arms and to which the citizen must yield, and a valid exercise of the legislative power.” Id. The Court further stated that, “the right of the legislature to prohibit the wearing of concealed weapons under state constitution, in many respects like our own, is now generally conceded. Indeed, our constitution in express terms says that it is not intended thereby to justify the practice of wearing concealed weapons.” State v. Keet, 190 S.W. 573 (Mo. 1916), further upheld the right of the legislature to ban concealed weapons holding that “..... the intention is that the Legislature shall have the power to destroy such practice or custom by prohibiting the wearing of concealed weapons by any individual....” The Court further stated, “Less than a century ago the arms of the pioneer were carried openly, his rifle on his shoulder , his hunting knife in his belt. Since then deadly weapons have been devised small enough to be carried effectively concealed in an ordinary pocket. The practice of carrying such weapons concealed is appreciated and indulged in mainly by the enemies of social order. Our State has been one of the slower

to act in meeting this comparatively new evil, but she has finally spoken in no uncertain language.” Id. In State v. White, 299 S.W. 724 (Mo. 1923), the court upheld the power of the General Assembly to regulate the right to bear arms in an exhibiting a dangerous and deadly weapon case. In City of Cape Girardeau v. Joyce, 884 S.W.2d 33, 34 (Mo. App. E.D. 1994), the Court upheld a conviction under a municipal ordinance prohibiting the open carrying of a firearm readily capable of lethal use noting:

“Every constitution adopted by the citizens of the State of Missouri since its inception in 1820 contained language virtually identical to that of Article I, Section 23. However, such constitutional provisions have never been held to deprive the General Assembly of authority to enact laws which regulate the time, place and manner of bearing firearms.”

These decisions are not definitive of the issue before this Court. While courts have recognized the power of the legislature to regulate the time, place and manner of bearing firearms and certainly upheld the banning of concealed weapons pursuant to Article I, Section 23 of the Missouri Constitution and the legislature’s inherent power and police power, the issue of whether Article I, Section 23 of the Missouri Constitution allows the General Assembly to regulate the time, place and manner of bearing arms through a “Conceal and Carry” or “License to Carry” Law by allowing the right to bear concealed weapons has never previously been raised or decided. The issue before this Court is one of first impression.

26. Thirdly, the General Assembly has enacted numerous laws banning concealed weapons, which has included exceptions for authorizing concealed weapons in limited circumstances, through the exercise of its inherent power and police power. See State v. Gentry, 242 S.W. 398, 399 (Mo. 1922) (tracing changes in concealed weapons statutes). However, these laws do not conclusively answer the question before this Court,



as these laws are in unison with the plenary, inherent power of the legislature and the Bill of Rights. See generally, Comment The End of Gun Control or Protection Against Tyranny? The Impact of the New Wisconsin Constitutional Right to Bear Arms as State Gun Control Laws 2001 Wis. L. Rev. 249 (2001) and A Tale of Three Cities: The Right to Bear Arms in State Supreme Courts, 68 Temp. L. Rev. 1177 (1995). The question really becomes a resolution of the clash between the plenary, inherent power of the Legislature and a specific right of the people under the Bill of Rights.

27. Finally then, where the language of a constitutional provision is clear, resort to the constitutional debate is not necessary. State ex rel. Heimberger v. Bd. of Curators of University of Missouri, 188 S.W. 128, 131 (Mo banc 1916). And while the debate may be illustrative of the framers' intent, they are not controlling of the meaning of a provision, nor do they have binding force on this courts. Metal Forms Corp. v. Leachman, 599 S.W.2d 292, 296 (Mo. banc 1980).

In light of the lack of a clear and definitive interpretation or meaning of the words of the Constitution, this Court must turn to the constitutional debates in order to decipher the meaning of Article 1, Section 23 of the Missouri Constitution.

28. It should be noted that Missouri Const., Article I, Section 23, as adopted in 1945, provides: "That the right of every citizen to keep and bear arms in defense of his home, person and property, or when lawfully summoned in aid of civil power, shall not be questioned; but this shall not justify the wearing of concealed weapons." This provision of our current constitution was derived from Missouri Const., Art.II, Section 17 (1875), which stated: "That the right of no citizen to keep and bear arms in defense of his home, person and property, or in aid of the civil power, when thereto legally summoned,

shall be called into question; but nothing herein contained is intended to justify the practice of wearing concealed weapons.”

This Court finds no significant change in this language from the 1875 Constitution to date.

It should also be noted for completeness, that Missouri Constitution, Art. XIII, Section 3 (1820), read: “That the people have the right peaceably to assemble for their common good, and to apply to those vested with the powers of government for redress of grievances by petition or remonstrance; and that their right to bear arms in defense of themselves and of the State cannot be questioned.” Missouri Constitution, Art. I, Section 8 (1865) substituted, “the lawful authority of the State” for “the State.”

29. In the Debates of the Missouri Constitutional Convention of 1825, Volume I, The State Historical Society of Missouri (1932), Mr. Gantt is speaking on the constitutional provision as follows:

“..... Then this provision goes on and declares, that the [8, 33] right of every citizen to keep and bear arms in support of his house, his person, and his property, when these are unlawfully threatened, shall never be questioned, and that he shall also have the right to bear arms when he is summoned legally or under authority of law to aid the civil processes or to defend the State. There will be no difference of opinion, I think, upon that subject; but then the declaration is distinctly made, Mr. President, that nothing contained in this provision shall be construed to sanction or justify the wearing of concealed weapons. I need not call the attention of my brethren of the Bar to the fact that in one, at least, of the states of the Union, the decision was made that a provision in the Constitution declaring that the right of any citizen to bear arms shall not be questioned, prohibited [8,34] Legislature from preventing the wearing of concealed weapons.”

The concerns expressed here by Mr. Gantt is the Bliss v. Commonwealth, 12 Ky. 90 (1922) decision from Kentucky which struck down an act of the Kentucky Legislature

to prevent persons from wearing concealed arms as unconstitutional and void in that it violated the right to bear arms provision of the constitution.

Mr. Gantt continued:

“The wearing of concealed weapons is a practice which I presume meets with the general reprobation of all thinking men. It is a practice which cannot be too severely condemned. It is a practice which is fraught with the most incalculable evil.

The Committee desired me to say in reference to this provision that they gave no sanction to the idea which is sometimes entertained, not however by our Supreme Court, that the right to bear arms shall not [sic] include the right to carry a pistol in the pocket or a bowie knife under the belt.”

It seems clear from this history that the intent of the framers and the people who adopted the Constitution were to not justify the wearing of concealed weapons. This language was put into the Constitution due to a court striking down a law banning concealed weapons. This is a direct limitation on the inherent power of the legislature to regulate the manner, time and place of the citizens' right to bear arms. While the inherent power and police power of the legislature through Article III, Section 1 of the Missouri Constitution allows the regulation of the right to bear arms, this must be done under the limitation of Article I, Section 23 of the Missouri Constitution. To read the Constitutional provision and to find otherwise would make the words of the second clause of Article I, Section 23 a nullity. Clearly, that was not the intent of the framers or of the people adopting the Constitution.

30. To grant a request for a permanent injunction, the Court must be convinced that the need for such an injunction is supported by substantial evidence, is not against the weight of the evidence, and is supported by a correct application of the law.

Reproductive Health Services, Inc. v. Lee, 660 S.W.2<sup>nd</sup> 330, 335 (Mo. App. E.D. 1983).

The traditional test for issuing injunctive relief requires the Court to consider (1) the threat of irreparable harm to the movant; (2) the state of the balance between this harm and any injury that granting the injunction will inflict on the other parties litigant; and (3) the public interest. U.S. v. Stanec, 914 F.Supp. 322, 324 (Mo 1995). For a preliminary injunction, the plaintiff must also demonstrate the likelihood of success on the merits. Id. To obtain a permanent injunction, the plaintiff faces the same test, but must achieve success on the merits. Sherwood Ford, Inc. et al. v. Ford Motor Company, 875 F.Supp. 590, 593 (Mo. 1995).

This Court finds that Plaintiffs have achieved success on the merits in this case.

31. It is this Court's duty and responsibility to examine constitutional issues. It is certainly of the utmost importance to all Missourians as our constitution protects all our rights and freedoms under the Bill of Rights, be it freedom of speech, rights of assembly or right to bear arms. As the Kentucky Court said in Bliss v. Commonwealth, 12 Ky. 90 (Kentucky 1822):

“And if to be incompatible with the Constitution makes void the act, we must have been correct, throughout the examination of this case, in treating the question of compatibility, as one proper to be decided by the court. For it is emphatically the duty of the court to decide what the law is; and how is a law to be decided, unless it be known? and how can it be known without ascertaining, from a comparison with the constitution, whether there exists such an incompatibility between the acts of the legislature and the constitution as to make void the acts?”

A blind enforcement of every act of the legislature, might relieve the court from the trouble and responsibility of deciding on the consistency of the legislative acts with the constitution; but the Court would not be thereby released from its obligations to obey the mandates of the constitution, and maintain the paramount authority of that instrument; and those obligations must cease to be acknowledged, or the court becomes insensible to the impressions of moral sentiment, before the provisions of any act of the

legislature, which in the opinion of the court conflict with the constitution, can be enforced.

Whether or not an act of the legislature conflicts with the constitution, is, at all times, a question of great delicacy, and deserves the most mature and deliberate consideration of the court. But though a question of delicacy, yet as it is a judicial one, the court would be unworthy its station, were it to shrink from deciding it, whenever in the course of judicial examination, a decision becomes material to the right in contest. The court should never, on slight implication or vague conjecture, pronounce the legislature to have transcended its authority in the enactment of law; but when a clear and strong conviction is entertained, that an act of the legislature is incompatible with the Constitution, there is no alternative for the court to pursue, but to declare that conviction, and pronounce the act inoperative and void.”

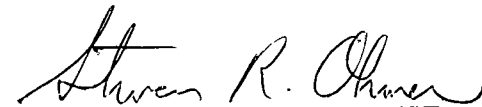
And such is the finding and conviction of this Court in relation to the Law at issue.

32. Accordingly, this Court finds and declares that the “Conceal and Carry” or “License to Carry” Law violates Article 1, Section 23 of the Missouri Constitution, and such Law is therefore unconstitutional and void. The Court further finds that permanent injunctive relief is appropriate and further injunctive relief is granted because the public interests, and not only private interests, are at issue. The Court further finds that in the absence of permanent injunctive relief, Plaintiffs will suffer irreparable harm, and that the Plaintiffs have no adequate remedy at law. Therefore, the Court finds and enters a Declaratory Judgment pursuant to §536.050 that the “Conceal and Carry” or “License to Carry” Law violates Article I, Section 23 of the Missouri Constitution. The Court hereby enters a Permanent Injunction as prayed for by the Plaintiffs’ Amended Verified Petition. It is therefore ORDERED, ADJUDGED AND DECREED that Defendants, State of Missouri and Jeremiah W. (Jay) Nixon, in his capacity as Attorney General of the State of Missouri, and all parties, employees or agents working for or in concert with the State of Missouri, are enjoined from enforcing §§50.535,571.030 and 571.094 (House Bills

No. 349, 120, 136 and 328, 92<sup>nd</sup> General Assembly (commonly known as the “Conceal and Carry” or “License to Carry” Law), including, but not limited to, any and all acts by said Defendants, or intervenor, Bull’s Eye, Inc., in respect to the implementation or enforcement of any provision in such statutes by any person or entity, polical or otherwise, within the State of Missouri, and that said statutes known as the “Conceal and Carry” or “License to Carry” Law shall not take effect pending appellate review.

IT IS FURTHER ORDERED that the preliminary injunction bond posted by Plaintiffs pursuant to this Court’s order of October 10, 2003, in the amount of Two Hundred Fifty Thousand Dollars (\$250,000.00) secured shall remain in full force and effect pending appellate review. Court costs are taxed to the Defendants.

Entered at St. Louis, Missouri, this 17<sup>th</sup> day of November, 2003.



Hon. Steven R. Ohmer  
Circuit Judge – Division 2  
Mo. Bar No. 28239

cc: Attorneys (attached)

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