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

ALVIN BROOKS, et al. *Plaintiffs,* v. *STATE OF MISSOURI, a state government, et al.,* *and* *BULL'S EYE, LLC, GERI STEPHENS, President of Bulls Eye, LLC and JIM STEPHENS,* *Defendants.*	)	*Cause No. 034-02425* *Division No.*

DEFENDANTS' BRIEF RE CONSTITUTIONALITY OF CONCEAL CARRY
INTRODUCTION

This is not a case about whether the concealed carrying of weapons is a beneficial or a pernicious societal practice. Neither is this a case about whether guns are good or bad, or about whether people carrying guns are protective or threatening. Rather, this is a case about the proper interplay between the Missouri legislature and the Missouri Constitution. The legislature may not defy any stricture of the Missouri Constitution. However, it has the duty and the right to fill in the gaps of the Constitution left by the drafters.

The Missouri legislature exercised this right by passing the subject legislation, permitting the carrying of concealed weapons under certain circumstances. Plaintiffs have argued that the statute violates Article I, Sec. 23 of the Constitution, which guarantees the individual right to keep and bear arms. A thorough examination of the Constitution's language, the legislative

history, and corresponding legislation in other states, reveals that this legislative action was legally sound. Contrary to plaintiffs' argument, the phrase "this shall not justify," does not, by definition, advance an approval or a prohibition of any act. Rather, in this context it acknowledges that nothing in Article I, Section 23 automatically creates the right to carry concealed weapons. Thus, the issue of concealed carry was explicitly not addressed in the Constitution, creating a gap in Missouri law. The legislature is vested with plenary power to address such gaps.

The legislature's decision in this instance may not be universally popular; nonetheless, a challenge to its *legal* validity is ultimately baseless. An examination of the evidence demonstrates that plaintiffs' stealthy, last-minute challenge is fundamentally flawed, though it may have appeared superficially meritorious. The granting of a permanent injunction, however, requires thorough evidence, which here is lacking. If plaintiffs wish to challenge the law, the proper legal forum is the next legislative session. They should not be allowed, and thereby encouraged, to circumvent the strictures of our system of government through this suit to frustrate the legislature.

I. SUMMARY OF THE ARGUMENT

Article I, Section 23 of the Missouri constitution is not vague on its face. Nowhere within its plain language is there a prohibition of concealed carry. Further, the legislative history of this Article suggests the second clause ("but this shall not justify the wearing of concealed weapons") was added as a direction to the courts, not the legislature, to refrain from adjudicating the general "right to bear arms" provision vested Missouri citizens with a *constitutional* right to carry concealed weapons. Nothing in the legislative history suggests Article I, Section 23, or its precursors, created a blanket prohibition of concealed carry.

Further, the Supreme Court of Missouri has never acknowledged such a prohibition. Rather, the Court has repeatedly recognized the Legislature's authority to regulate the rights of Missouri citizens to carry concealed weapons. It has done so by upholding regulatory statutes enacted by the Missouri legislature in the face of constitutional challenges. The Missouri executive, the Missouri legislature, and the Missouri judiciary, have exercised their respective powers in regard to RSMO section 571.030 and its precursors, acknowledging the right of the Missouri legislature to regulate concealed carry for over a century.

Accordingly, because there is an absence of evidence to show Article I, Section 23 creates a blanket prohibition on concealed carry, and because there is a body of evidence to show it leaves such a determination in the hands of the legislature, this Court should refuse to grant plaintiffs request for a permanent injunction.

II. STANDARD OF REVIEW

To grant a request for permanent injunction, the Trial Judge 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.2d 330, 335 (Mo.App.E.D. 1983). The traditional test for issuance of 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 (E.D. Mo, 1995). For a preliminary injunction, the plaintiff must also demonstrate a 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 (E.D. Mo 1995).

Plaintiffs have failed to demonstrate the threat of irreparable harm should the injunction not issue. Plaintiffs make the bald statement that they "will suffer irreparable harm by reason of the deprivation of constitutional rights." (Petition, para. 22). While the deprivation of constitutional rights may cause harm, plaintiffs have demonstrated no substantive right granted to them as individuals under Article 1, Section 23 of the Missouri Constitution that will be affected by this legislation. The only constitutional right granted in that section is the guarantee that every citizen "may keep and bear arms." The statute at issue does not infringe upon that guarantee, and therefore plaintiffs stand to be deprived of no right. The loss of something that does not exist is hardly an injury.

Under the second factor above, the Court must weigh this professed harm against the injury inflicted on defendants by issuance of a permanent injunction. The State of Missouri, on behalf of its citizenry, has an interest in the implementation of appropriate legislation. The right of the people to be governed by laws decreed by their duly-elected representatives is not to be lightly discarded. Further, this defendant demonstrated through evidence adduced before the Court on October 10, 2003, harm inflicted upon them by the granting of an injunction. That evidence will not be repeated here, but is incorporated by reference. Given the vague harm alleged by plaintiffs, the economic and business injury to be further suffered by the intervening defendant surely weighs against the injunction.

The final factor requires the Court to consider the public interest at stake. The public interest lies chiefly with the continued operation of government in accordance with Constitutional principles. This includes the necessity that the legislature operate according to its duty and right to legislate for the common good. This operation does not guarantee universal approval of the legislature's actions. But the public has the right to demand that its laws be

determined by the legislature, rather than through politically motivated lawsuits, regardless of any well-meant intentions by the plaintiffs. The public relies upon the Courts to check unconstitutional actions by the legislature, but also to defer to the legislature when that body acts within its mandated arena. As discussed below, the current issues before this Court demand such deference.

III. ARGUMENT

The relevant section of the Missouri Constitution reads as follows:

> **Section 23. 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.**

MO Const. Art. I § 23.

Because this section is not vague on its face, and because it contains no prohibition of concealed carrying, the legislature had sufficient room to proactively legislate on the issue.

A. The Plain Language of Article I, Section 23 does not prohibit either concealed carry or the legislature's right to regulate concealed carry.

If a statute or provision is not vague, a court is not entitled to go beyond the face of the statute to determine its meaning**.** City of St. Louis v. Crowe, 376 S.W.2d 185 (MO. 1964); State ex rel. Bell v. Phillips Petroleum Co., 349 Mo. 360 (1942); U.S. v Missouri Pacific Railroad Co., 278 U.S. 269 (1929). Article I, Section 23 of the Missouri Constitution is not vague. Its words do not create a restriction on the right of Missouri citizens to carry concealed weapons. The pertinent part of the section reads, "but *this shall not justify* the wearing of concealed weapons." (emphasis added). The word "this" in this second phrase of Section 23 refers to the portion of the preceding section, "the right of every citizen to keep and bear arms in defense of his home, person and property shall not be questioned." "Justify" is defined by Black's Law Dictionary as

"to provide a lawful or sufficient reason for one's acts or omissions." "Justify" is again defined by Meriam Webster's Dictionary as "to show sufficient lawful reason for an act done." Therefore, what this statute says, in different terms, is "*the right of every citizen to keep and bear arms does not, in and of itself, show sufficient lawful reason for the wearing of concealed weapons*." Nothing in this section, however forbids a sufficient lawful reason from being stated elsewhere.

Absence of justification does not equal a prohibition. The underlying assumption of plaintiffs' argument, as evidenced by their repeated mention of "the prohibition," is that something in this clause prohibits the concealed carrying of weapons. This is simply a false assumption. The clause does not authorize concealed carry, but neither does it prohibit it.

Correspondingly, nothing in the section eviscerates the otherwise present right of the legislature to fill in the gap. Contrary to plaintiffs' assertion, the right of the legislature to fill in the gaps created by a constitution need not be specifically mentioned; rather, that plenary power is assumed unless clear direction to the contrary is present. Seminole Tribe of Florida v. Florida, 116 S.Ct. 1114, 1177 (1996). The legislature is not as easily immobilized as plaintiffs pretend.

B. Other Provisions of the Bill of Rights which use language similar to the second clause of Article I, Section 23 show the phrase "but this shall not justify" was not intended to created a blanket prohibition.

Further evidence that the second clause of Article I, Section 23 is not vague can be found in the other provisions of the Missouri Constitution. When interpreting a particular constitutional provision, it is appropriate for the reviewing court to examine other parts of the same document for guidance. See United Savings Ass'n of Texas v. Timbers of Inwood Forest Assocs., 484 U.S. 365, 371 (1988); see e.g., Kokoszka v. Belford, 417 U.S. 642, 650 (1974); Conroy v. Aniskoff, 113 S.Ct. 1562 (1993). The Religious Freedom section of the Missouri Bill

of Rights [the same Bill of Rights wherein the right to bear arms provision is found] reads as follows:

> That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; that no human authority can control or interfere with the rights of conscience; that no person shall, on account of his religious persuasion or belief, be rendered ineligible to any public office of trust or profit in this state, be disqualified from testifying or serving as a juror, or be molested in his person or estate; but this section **shall not be construed to excuse acts of licentiousness, nor to justify practices inconsistent with the good order, peace or safety of the state, or with the rights of others**.

Art. I, Sec. V

Applying plaintiffs' argument, this section would render religious practices that are "inconsistent with the good order, peace or safety of the state," not only unprotected, but unconstitutional without further action by the legislature**.** Assuming that the legislature does not prohibit certain practices that a hypothetical judge considers "inconsistent with the good order, peace or safety of the state," would the judge be free to mandate their prohibition? Under plaintiff's interpretation, this hypothetical judge could convert a constitutionally unprotected practice to unconstitutional status. The judge could thereby defy a legislative act approving a religious practice otherwise viewed as "inconsistent with good order." This is not what the language intends.

The clause quoted above from Article I, Section 5 clarifies that certain practices are not addressed therein. The language denies constitutional protection to certain practices, but does not render them *de facto* unconstitutional. "[T]his section shall not be construed to excuse . . . nor to justify [X]" is not the same as "[T]his section itself prohibits [X], even if the legislature wants to choose to permit it." The language chosen by the drafters of the constitution allows action by the legislature in both Sections 5 and

23 of Article I. The language on its face is clear, and it is therefore this court's duty to accept it as such.

C. Neither the Title of Article I, Section 23, nor the 1945 change in its language indicate the legislature intended to create a prohibition on concealed carry.

Although it is unclear, Plaintiff appears to advance two strict interpretation arguments which allegedly support their contention that the drafters intended to create a blanket prohibition on concealed carry: first, that the word "exception" after "right to bear arms" indicates the drafters intended a ban on concealed carry, and second, that the change from "but nothing herein contained is intended to justify the practice of wearing concealed weapons," to "but this shall not justify the wearing of concealed weapons" indicates a similar ban. Notably, both of these changes to the constitution occurred in 1945, long after the initial constitutional provision was created in 1876. Thus, one would assume, if those who made the changes had wanted to ensure the difference was understood, they would have used unequivocal language to note their intentions. Even aside from this, however, plaintiffs' points contain little validity. First, the title to this section was not even created by those who drafted/amended the body of the text. See Affidavit of Kenneth H. Winn, attached hereto as Exhibit A. Thus, its significance can not be illustrative of the framer's intentions. Secondly, the difference between "but nothing contained herein is intended to justify" and "but this shall not justify" could just as easily be interpreted to be a clarification that the legislature is solely vested with the right to regulate concealed carry, and the rest of this section was not meant to intrude upon that right. This interpretation is favored by the following discussion of the legislative history of this provision, as well as years of its interpretation by the courts of this state.

D. A Century of Legislative, Judicial, and Executive Action Indicates Article I, Section 23 does not contain a blanket prohibition on concealed carry.

a. History of the Adoption of the Second Clause of Article I, Section 23 shows the drafter's intent was to limit the judiciary, not the legislature.

The concealed carry provision Article I, Section 23 was added in 1875, as a response to a Kentucky case, Bliss v. Commonwealth, 1822 WL 1085 (Mo.App. 1822). Bliss arose out of the Kentucky legislature's enactment of a law regulating the manner in which Kentucky citizens could carry concealed weapons. A Kentucky state court struck down this law because it believed the right to bear arms section of the Kentucky constitution, "that the right of the citizens to bear arms in defence of themselves and the state, shall not be questioned," conferred an unfettered, constitutional right on Kentucky citizens to carry weapons in any manner and at any time. After this case, Missouri, like many other states, wished to clarify that its right to bear arms provision did NOT strip the legislature of its ability to limit the time, place, and manner of Missouri citizens' right to carry. In other words, the clause "but this shall not justify the concealed carrying of weapons," meant that the right to bear arms in defense of home, person and property did not confer an *unfettered* right to bear arms in any way, at any time, and in any place. Even though this clause was added to ensure the legislature could narrow the right to bear arms, it nonetheless functions as an acknowledgement of the legislature's right to regulate. *See A Tale of Three Cities: The Right to Bear Arms in State Supreme Courts*, Temp. L. Rev. 1177, 1205.

i. The Debates of the Missouri Constitutional Convention of 1875 Indicate a Prohibition of Concealed Carry was NOT Intended by the Drafters.

Plaintiffs cite a portion of the Debates of the Missouri Constitutional Convention of 1875 to support their contention that Article I, Section 23 was intended to act as a prohibition on concealed carry. The language they cite took place on the first day of the debates, and was the

only discussion whatsoever of the right to bear arms provision on that day. The language they quoted is as follows:

> 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. [notably, nothing is said about this provision prohibiting concealed carry]. 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****.*

First, the significance which should be given this passage is questionable, at best. This was spoken by one Mr. Gantt, who was one out of sixty-four representatives present at the debates. Second, this debate took place on one of the first twelve days during which the Convention held sessions. As stated by those who compiled the books of these debates, "As these days were devoted mainly to organization and preliminary matters, the debates [therein included] are neither as extensive nor as important as in the latter periods." Id. at 8. Further, "the Convention did not begin its actual work of revision until the 12th day." Id. Notably, when passage of the right to bear arms provision was passed in Volume II of the Debates, no discussion whatsoever was given to ensuring a prohibition was contained in the language. Id. at Vol. II, 503-504. However, even if this language was given primary importance in assisting this Court's interpretation, the language itself acknowledges that the committee for whom Mr. Gant spoke did not wish to condemn concealed carry. This sentiment is expressed in Mr. Gantt's statement "The Committee desired me to say in reference to [the right to bear arms] provision that they gave no sanction to the idea . . . 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." I.e., the committee was not

saying the right to bear arms provision did not include the right to concealed carry. Such a construction of language has no other reasonable meaning.

ii. The Missouri Judiciary Has Never Acknowledged a Constitutional Prohibition of Concealed Carry, But Has Repeatedly Recognized the Right of the Missouri Legislature to Regulate Concealed Carry.

Not only does the legislative history indicate the second clause is not a prohibition on concealed carry, years of interpretation by the courts of Missouri, mainly the Supreme Court, also indicate no such prohibition was intended. Rather, these cases repeatedly recognize the right of the legislature to regulate, albeit restrictively, in this area. In fact, although proposed for a different reason, the case language cited by plaintiffs in their memorandum in support of their petition even evidences a recognition of the right to legislate. As a discussion of the cases which follow will show, there is no support in Missouri caselaw for the proposition that the second clause was intended as a blanket prohibition on concealed carry.

In State v. Wilforth (Mo. 1881), which was decided under the precursor to Article I, Section 23, the Missouri Supreme Court held that a ban on concealed carry was constitutional. The exact language used suggests that the legislature was within its discretion in addressing the issue through statute. There is no discussion by the court that the constitutional provision in question required a ban on concealed carry--only that "but nothing herein contained is intended to justify the practice of wearing concealed weapons" granted the legislature authority to address the issue as they saw fit.

Further, State v. Shelby (Mo. 1886) clearly acknowledges legislative discretion in what laws may be passed to regulate not only concealed carry, but even open carry when intoxicated or in certain places. While not explicit that the "justify the practice" clause allowed the

legislature to legalize concealed carry, it is hard to read the text of this decision and come to a different conclusion. The text reads as follows:

> The right of the legislature to prohibit the wearing of concealed weapons under state constitutions, 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. The portions of the act which make it an offence for any one to carry concealed upon his person a dangerous or deadly weapon, is clearly within the legitimate domain of legislative power.

The reason for addition of this provision is clear. Further, the case law acknowledges that the legislature has the right to regulate concealed carry. Even though the type of regulation generally advanced under these cases was negative, the cases still demonstrate the most important point – that the Missouri Supreme Court has recognized that the legislature has the authority to regulate concealed carry issues.

In State v. White, 253 S.W. 724 (1923), defendant was prosecuted according to V.A.M.S. 564.610, the precursor to 571.030, for exhibiting a dangerous and deadly weapon. Defendant challenged the constitutionality of this statute, claiming it was an unconstitutional infringement on his right to bear arms. Plaintiffs cited the following language to support their proposition that Article I, Section 23 creates a ban on the concealed carrying of weapons:

> The evident purpose of section 17, art.2, is to render the citizen secure in his home, his person, and his property. - - - The moment a citizen ceases to act in protection of his home, his person, or his property, - - - he steps out from under the protection of the Constitution, *and his right to bear arms may be taken away or limited by reasonable restrictions*. The reasoning of the cases sustaining *statutes prohibiting the carrying of concealed weapons* is applicable here also.

It is unclear how plaintiffs construe this language to show there is a constitutional ban on concealed carry. If that were the case, such discussion would be unnecessary, and a mere statement of the fact that concealed carry is unconstitutional would suffice. Even aside from this, two things are made fairly clear by the direct language of this statement. First, the language

"and his right to bear arms may be taken away or limited by reasonable restrictions" recognizes the right of the legislature to regulate this area of law. Second, the words "the reasoning of the cases sustaining statutes prohibiting the carry of concealed weapons" recognizes that the prohibition on concealed carry stems from statutes, rather than from the constitution. These points were further emphasized by the Court earlier when it addressed the constitutionality of the disputed statute and found it to be "in the interest of public peace and the protection of human life, [and] in harmony with section 17, art. 2 of the Constitution." In coming to this conclusion, the Court made the relevant statement, "Section 17, art. 2, of the Constitution *authorizes the Legislature to prohibit the wearing of concealed weapons*." Id. at 726. (emphasis added). Once again, the Court recognizes that a prohibition, if any, would be created by the legislature, not the constitution itself.

Even as recently as 1994, a Missouri court recognized the role of the legislature in regulating concealed carry. For example, the Eastern District in City of Cape Girardeau v. Joyce, stated that every constitution adopted by the citizens of the State of Missouri since its inception in 1820 has contained language virtually identical to that of Article I, Section 23. 884 S.W.2d 33, 34 (E.D.Mo. 1994). Further, the court acknowledged, *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.* Id. Further, as dictated by the Supreme Court of this state, "the constitution, in declaring that every citizen has the right to bear arms in defense of himself and the state, has neither expressly or by implication denied to the legislature the right to enact laws in regard to the manner in which arms shall be borne. State v. Wilforth, 74 Mo. 528 (1881). Finally, nothing in the Missouri constitution limits the power of the legislature to

enact laws pertaining to the time, place and manner of carrying weapons. Joyce, 884 S.W.2d at 35.

Thus, the case law works only to support the proposition that the Missouri legislature retains all rights to legislate regarding concealed carry. Certainly, if the right to bear arms provision so clearly prohibited concealed carry, as plaintiffs argue, some Court would have recognized the unconstitutional nature of a challenged statute.

b. Through RSMO section 571.030 and Its Precursors, the Missouri Legislature, Executive, and Judiciary Have Recognized the Legislature's Right to Regulate Concealed Carry for Over a Century.

Plaintiffs argue that, "the exception to this constitutional provision is clearly a prohibition on the wearing of *any* concealed firearm." (Amended Petition, para. 7) (emphasis added). Plaintiffs' interpretation of Section 23 leaves no room for the legislature to create law allowing concealed carry in *any* circumstances. Such an interpretation of Section 23 is not only contrary to the wording of the statute on its face, to the legislative history of the provision, and to the case law interpreting this provision, but is also contrary to the legislative interpretation of the Section since its enactment. The legislature has continually recognized that there are times where certain people will be justified in carrying concealed weapons. This sentiment is presently embodied in the Missouri Statues at Section 571.030. In this section, the following list of people are allowed to carry concealed weapons:

> (1) State, county, and municipal law enforcement officers (or any person summoned by such officers to assist in making arrests or preserving the peace while actually engaged in assisting such officer); (2) wardens, superintendents and keepers of prisons, penitentiaries, jails and other institutions for the detention of persons accused or convicted of crime; (3) members of the armed forces or national guard while performing their official duty; (4) state and federal judges; (5) any person whose bona fide duty is to execute process, civil or criminal; (6) any federal probation officer; (7) any state probation or parole officer; (8) any corporate security advisor; (9) a person in his dwelling unit; (10) a person upon business premises over which the actor has possession, authority or control; and

(11) a person who is traveling in a continuous journey peaceably through the state.

As with the subject conceal carry legislation, this statute recognizes instances where the legislature has deemed that personal protection issues justify carrying a concealed weapon. For instance, state and federal judges, listed in group (4), have no need to carry a concealed weapon for the sake of aiding in law enforcement. The legislature has simply made a determination that they are justified in carrying concealed weapons due to the nature of their jobs and responsibilities. The same is true for persons in groups (5) through (8). Similarly, persons within their dwellings, or protecting their business premises are justified, according to the legislature, in carrying concealed weapons, as are persons traveling on a continuous journey through the state. Article I, Section 23 cannot simultaneously mandate a complete ban on concealed carry and allow the legislature to create the right to concealed carry in these few designated groups. Either the legislature has the right to regulate concealed carry, or it does not.

More appropriately, this latest concealed carry legislation should be viewed as a twelfth group, authorized to carry concealed weapons with proper training and permit. The legislature has simply determined that persons undergoing the requisite training, and fulfilling the requirements of the application process, should share the status already granted to persons in section 571.030. Section 571.090 sets forth the procedure for obtaining permits under 571.030, and has remained unmodified for more than ten years.

Statutes like 571.030 are not new to Missouri law. 571.030's indirect precursor dates back to 1874 when the first law against concealed carry was adopted. However, this law did not ban concealed carry as a whole but only in specified places.[1] See Jamison, Kevin, CCW-

[1] Thus, plaintiff's argument that "but this shall not justify the carrying of concealed weapons" must have been a complete ban on concealed carry in order to avoid surplusage fails. See Plaintiffs' Memorandum in Support of

Missouri Statutory History, at http://www.moccw.org/ccwhistory.html citing Laws of Missouri 1874 at 43. This statute was amended in 1875 and again in 1877, but it was not until 1879 that an entire ban on concealed carry was placed in the statutes. Id., citing RSMO section 1274. At that point, a second section , RSMO section 1275, was created. This section, like the exceptions provisions in 571.030(2), outlined those people who were exempt from the prohibition on concealed carry (people who were moving, traveling, carrying in response to physical threat, or possessing a "good" reason to otherwise carry). These exemptions have been adjudicated by the courts, over the years, and have never been held unconstitutional. See State v. Livesay, 1888 WL 1727 (Mo. App. 1888); State v. Dees, 109 S.W. 800 (Mo.App. 1908); State v. Hovis, 116 S.W. 6 (Mo.App. 1909); State v. White, 253 S.W. 724 (Mo. 1923); City of Cape Girardeau v. Joyce, 884 S.W.2d 33 (Mo.App. 1994). In fact, when interpreting particular statutory exemptions, courts often reference the fact that the Missouri legislature has the right to regulate concealed carry, "Section 17, art.2 [the precursor to present right to bear arms provision] of the Constitution authorizes the Legislature to prohibit the wearing of concealed weapons." White, 253 S.W. at 726. Even though the references are often to the legislature's power to restrict concealed carry, they necessarily imply that the legislature has the right to regulate.

E. Two Other State Constitutions with Language Very Similar to Article I, Section 23, Have Been Interpreted to Allow Legislative Regulation of Concealed Carry.

Notably, both the constitutions of Montana and Colorado contain right to bear arms provisions similar to that of this state. Although the laws of these states are not binding on the Court, their respective legal positions are instructive. Colorado's provision reads as follows:

> **Section 13. Right to bear arms: 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***

Plaintiffs' Verified Petition for Preliminary Injunctive Relief, at 3. If the drafters had intended this section to prohibit concealed carry, it would have been an override of the legislature rather than a redundancy.

> ***contained shall be construed to justify the practice of carrying concealed weapons.***

Colo. Const. Art II, § 13.

Montana's right to bear arms section reads as follows:

> **The right of any person to keep or bear arms in defense of his own 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.***

Mont. Const. Art II, § 12

Despite the provisions of these constitutions regarding concealed carry (which are almost identical to Missouri's concealed carry provision), both the Colorado and the Montana legislatures have enacted concealed carry legislation, allowing the carry of concealed weapons by the citizens of the respective states. These enactments acknowledge that nothing in these phrases limits the otherwise inherent power of the legislature. Rather, the phrases simply acknowledge that the right to carry concealed weapons is not automatically created by the provision which gives the general right to bear arms in defense of home, person, or property. The drafters chose to leave the specific regulations of the bearing of arms to the legislature, to craft in a way most effective for the place and times.

CONCLUSION

Opponents of the newly enacted concealed carry legislation have, at the eleventh hour, resorted to the Courts to block the implementation of the laws. This tactic is ill advised and should fail as a matter of law.

The societal benefits and costs of creating the right to carry concealed weapons, it should be presumed, were carefully and painstakingly considered by the legislature in reviewing

whether or not to enact this legislation. Such legislative committee meetings would have been the proper time and place for plaintiffs to voice their opinions in opposition to the passage of this legislation. The legislature, in its wisdom, after exhaustive review and consideration of all aspects of this issue, has seen fit to create the right to carry concealed weapons for its citizens even over the veto of the governor. This Court previously recognized that plaintiffs' other allegations were meritless, and are not herein addressed. The only relevant question remaining for this Court is whether the legislature acted within the scope of its authority. The sole issue may be framed this way:

> Does any fair and reasonable interpretation of *Article I, Section 23* of the Missouri Constitution support the contention that the drafters of this article intended that the right to carry concealed weapons should be prohibited?

Since the statute on its face, the legislative history, the body of case law, and the statutes of other states each indicate such a prohibition was NOT intended, this Court's decision should be clear. The proper avenue for plaintiffs' redress is the ballot box, by electing state senators and representatives to reconsider the matter. The Missouri State Legislature, working within the scope of its duly constituted authority, and in no defiance of an explicit constitutional prohibition to the contrary has enacted a law, and affirmed its enactment over the veto of the governor of the State of Missouri. Without more, this should establish the position of this Court to summarily dismiss plaintiff's petition and lift the related injunction ordered without further unnecessary delay.

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