



NOV 07 2003

MARIANO V. FAVAZZA
CLERK, CIRCUIT COURT
DEPUTY

TWENTY-SECOND JUDICIAL CIRCUIT OF MISSOURI BY _____

CIVIL COURTS BUILDING
10 NORTH TUCKER BOULEVARD
ST. LOUIS, MISSOURI 63101-2097

314-622-4002
FAX 314-589-6599
e-mail: mdavid@osca.state.mo.us

MICHAEL P. DAVID
PRESIDING JUDGE

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

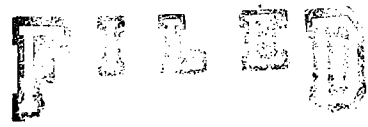
TWENTY-SECOND JUDICIAL CIRCUIT

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 23rd 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. 2nd 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 92nd 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.2nd 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. 2nd 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 Svs., 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. 2nd 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.2nd 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; 7th: 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.”

