

IN THE CIRCUIT COURT OF BOONE COUNTY
STATE OF MISSOURI

STATE OF MISSOURI, ex rel.)
JOSHUA D. HAWLEY)

Plaintiff,)

v.)

No. 16BA-CV02758

MUN CHOI AND THE CURATORS)
OF THE UNIVERSITY OF MISSOURI,)

Defendants.)

and

ROYCE de R. BARONDES)

Plaintiff,)

AND)

STATE OF MISSOURI, ex rel.)
JOSHUA D. HAWLEY)

Plaintiff-Intervenor,)

v.)

No. 16BA-CV03144

MUN CHOI AND THE CURATORS OF)
THE UNIVERSITY OF MISSOURI,)

Defendants.)

ORDER AND JUDGMENT

Because these two cases involve similar issues and parties, the Court enters this order and judgment in both cases.

In 2758 and 3144, the Court denies defendants' motions and cross-motions for judgment on the pleadings on plaintiffs' Article I, Section 23 claims. In 2758 and 3144, the Court grants defendants' motions and cross-motions for judgment on the pleadings

on plaintiffs' claims regarding RSMo Section 571.030.6, and denies plaintiffs' motions on the 571.030.6 claims.

DISCUSSION

A. The Article I, Section 23 Claims

In moving for judgment on the pleadings on plaintiffs' constitutional challenges to Curators' Rule 110.010(B)(4) (the "Rule"), defendants argue that there is no constitutional right to bear arms on University property and that, as a result, the Court should dismiss plaintiffs' claims without engaging in strict scrutiny or another level of constitutional analysis of the Rule. The Court disagrees that no analysis should occur.

At this juncture, the Court is not convinced that the two 19th Century cases relied upon by defendants – *State v. Wilforth*, 74 Mo. 528 (1881) and *State v. Shelby*, 90 Mo. 302 (1886) – removed firearms regulation by universities and colleges from strict scrutiny analysis or any other level of constitutional review. In Wilforth, a criminal case, the court held that a criminal statute prohibiting the carrying of concealed weapons did not violate the Second Amendment. The defendant was convicted of taking a weapon "into a church house . . . where people were assembled for literary purposes . . . for the purpose of a school exhibition." *Wilforth*, 74 Mo. at 529. In upholding the defendant's conviction, the Wilforth court did not state that the Second Amendment did not extend to "schools," nor did the court discuss schools and firearms at any length. The question before the court was whether states could regulate firearms without violating the Second Amendment. In Shelby, which involved a defendant accused of concealing a deadly weapon while in a hotel, the court merely cited Wilforth without discussing schools and firearms. Under the facts and the holding of these cases, it is difficult to

conclude that they stand for the proposition that universities can regulate firearms without any constitutional scrutiny of the regulation itself. Wilforth and Shelby did not go that far. As a result, the Rule is not exempt from some level of constitutional scrutiny even if a university is a “sensitive place” as that term is used in Second Amendment cases, *see, e.g., District of Columbia v. Heller*, 554 U.S. 570, 626-27 (2008), and even if the 2014 amendment to Article I, Section 23 simply “enshrined the status quo as to the right to bear arms.” *See State v. Clay*, 481 S.W.3d 531, 536 (Mo. 2016). The Court also notes that Article I, Section 23 states that any restriction on the right of citizens to keep and bear arms “shall be subject to strict scrutiny.” Mo. Const., Art. I, Sec. 23. *See also Clay*, 481 S.W.3d at 533 (noting that courts applied strict scrutiny analysis to firearms regulations prior to the amendment to Art. I, Section 23). Some level of scrutiny of the Rule is required to determine whether it passes constitutional muster. For these reasons, the Court denies defendants’ motions and cross-motions for judgment on the pleadings on plaintiffs’ constitutional challenges.

B. The Section 571.030.6 Claims

The Court agrees with defendants that the Rule does not conflict with and is not invalidated by Section 571.030.6. Section 571.030.6, by its own language, addresses criminal conduct, and does not determine what defendants can regulate as a civil matter on their own property.

The plain language of Section 571.030.6 supports defendants’ argument that the Rule does not conflict with the statute. Section 571.030.6 begins with the clause, “Notwithstanding any provision of this section to the contrary.” “Notwithstanding” means “despite” or “in spite of.” *See, e.g., Black’s Law Dictionary* at 1094. The “section”

referred to is Section 571.030, which begins, "A person commits the offense of unlawful use of weapons, except as otherwise provided . . . , if he or she knowingly . . ." RSMo Section 571.030.1. Section 571.030 goes on to define the criminal offense of unlawful use of weapons and enumerate exceptions to the offense and punishment for the offense. *See, e.g.*, RSMo Section 571.030.1(3) (a person commits the offense of unlawful use of a weapon if he knowingly "discharges or shoots a firearm into a dwelling house"); RSMo Section 571.030.2 (exempts uses associated with or necessary to fulfilling "official duties"); RSMo Section 571.030.9 (listing criminal sentences for violations). Section 571.030.6, accordingly, addresses what conduct constitutes the unlawful use of weapons, and not what conduct the University can regulate on its property as a civil matter.

In concluding that the Rule does not conflict with the statute, the Court simply cannot ignore the plain language and meaning of the "notwithstanding" clause and read the rest of Section 571.030.6 in isolation. "Notwithstanding," as noted above, quite obviously means "despite," or "in spite of," and the Court must give effect to its plain meaning. In doing so, the Court gives no effect or significance to the title of the statute given by the Revisor. The plain language controls. There is no conflict between the Rule and Section 571.030.6. For these reasons, the Court grants defendants' motions as to plaintiffs' 571.030.6 claims.

CONCLUSION

In 2758, the Court denies defendants' cross-motion¹ for judgment on the pleadings on Counts 2, 3 and 4 (the Article I, Section 23 claims) of the State's amended petition.

In 2758, the Court grants defendants' cross-motion for judgment on the pleadings on Count 1 (the 571.030.6 claim) of the State's amended petition, and denies the State's motion for judgment on the pleadings on Count 1, and enters judgment of dismissal with prejudice in favor of defendants on Count 1 (the 571.030.6 claim).

In 3144, the Court denies defendants' motion for judgment on the pleadings on Counts 2 and 3 (the Article I, Section 23 claims) of plaintiff Barondes' second amended petition, and denies defendants' cross-motion for judgment on the pleadings on Counts 2, 3 and 4 (the Article I, Section 23 claims) of the State's second amended petition.

In 3144, the Court grants defendants' motion for judgment on the pleadings on Count 1 (the 571.030.6 claim) of plaintiff Barondes' second amended petition and grants defendants' cross-motion for judgment on the pleadings on Count 1 (the 571.030.6 claim) of the State's second amended petition, and enters judgment of dismissal with prejudice on Count 1 in favor of defendants and against plaintiff Barondes and the State.

In 3144, for the record, the Court denies plaintiff Barondes' motion for summary judgment on Count 1 (the 571.030.6 claim) and denies the State's motion for judgment on the pleadings on Count 1 (the 571.030.6 claim).

¹ Defendants captioned their initial pleading as a "cross-motion" but later pleadings refer to their "motion."

In 2758 and 3144, the matter will be set for a consolidated bench trial not exceeding two days on the Article I, Section 23 claims.

9-5-18

Jeff Harris

Hon. Jeff Harris
Division 2

COURT SEAL OF



BOONE COUNTY