IN THE CIRCUIT COURT OF BOONE COUNTY
STATE OF MISSOURI

STATE OF MISSOURI, ex rel. Eric Schmitt, Attorney General,	)	
Plaintiff-Intervenor,	)	
v.	)	No. 16BA-CV03144
MUN CHOI, et al.,	)	
Defendants.	)	
Consolidated with	)	
STATE OF MISSOURI, ex rel. Eric Schmitt, Attorney General,	)	
Plaintiff,	)	
v.	)	Cause No. 16BA-CV02758
MUN CHOI, et al.,	)	
Defendants.	)	

FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT

Following a bench trial, the Court finds for Defendants for the reasons set forth below.

SUMMARY

The question before the Court is not whether the Court would vote for or against the Rule if the Court were a member of the University's Board of Curators. Rather, the Court's inquiry is limited to whether the Rule is constitutional based on the evidence adduced at trial.

Based largely on the testimony from law enforcement, the Court finds that the Rule satisfies strict scrutiny and is constitutional. The University presented unambiguous and essentially unrebutted testimony in support of the Rule from two police chiefs with nearly 70 years of law enforcement experience, backed by statistical evidence. The police chiefs explained

how and why the Rule is narrowly tailored to achieve compelling interests, and how the Rule achieves those interests. Notably, one police chief described himself as "pro gun" and the other is a gun enthusiast and accomplished marksman, yet both are unequivocally opposed to changing the Rule.

By contrast, the Attorney General offered no evidence from law enforcement and relied solely on a statistician whose opinions arguably support the Rule.

To reach a result based on something other than the evidence adduced at trial would be engaging in judicial activism, which the Court will not do. The Court must reach a judgment based on the evidence adduced at trial, and the evidence adduced at trial supports a finding that the Rule is constitutional.

FINDINGS OF FACT

1. This is a case brought by plaintiff-intervenor the State of Missouri, through the Attorney General of the State of Missouri, against The Curators of the University of Missouri and the University President, Mun Choi (collectively, the "University").

2. The Attorney General challenges the constitutionality of Section 110.010.B.4(a) (the "Rule") of the University's Collected Rules and Regulations ("CRR"). The Rule states that the "possession of and discharge of firearms, weapons and explosives on University property including University farms is prohibited except in regularly approved programs or by University agents or employees in the line of duty."

3. The Rule was promulgated by the University's Board of Curators, which is vested with the constitutional authority to govern the University pursuant to the Missouri Constitution. Mo. Const. Art. IX, § 9(a) ("The government of the state university shall be vested in a board of curators consisting of nine members appointed by the governor, by and with the

advice and consent of the senate."); see also Mo. Rev. Stat. § 172.100 ("The curators shall have power to make such bylaws or ordinances, rules and regulations as they may judge most expedient for the accomplishment of the trust reposed in them").

4. Although the evidence is unclear as to the actual date when the Rule was promulgated, no one disputes that the Rule has been in place for decades.

5. The Attorney General alleges that the Rule violates Article I, § 23 of the Missouri Constitution, which was amended in 2014 to state, in pertinent part, that

> "the right of every citizen to keep and bear arms, ammunition, and accessories typical to the normal function of such arms, in defense of his home, person, family and property shall not be questioned. The rights guaranteed by this section shall be unalienable. Any restriction on these rights shall be subject to strict scrutiny."

6. The Attorney General seeks a declaration that the Rule violates Article I, § 23 to the extent that it prohibits University employees from possessing firearms while driving their vehicles on University property to and from work (Count II); from keeping firearms secured and out of sight in their locked vehicles parked on University property while conducting activities within the scope of their employment (Count II); and from transferring firearms from the passenger compartment of their vehicles to the "trunk" of their vehicles while parked on University property and conducting activities within the scope of their employment (Count III).

7. The Attorney General also seeks a declaration that the Rule violates Article I, § 23 to the extent that it does not include a meaningful process whereby University employees with valid concealed carry permits ("CCWs") can request and obtain permission from the University to carry concealed firearms while at work (Count IV).

8. Count I of the Attorney General's Petition alleges that Mo. Rev. Stat. § 571.030.6 permits University employees to keep firearms locked and out-of-sight in their vehicles while parked on University property and thus preempts the Rule. The Court previously found that §

571.030.6 does not apply to the University and dismissed Count I of the Attorney General's Petition on September 5, 2018.

The Law Enforcement Evidence – Testimony of Police Chief Doug Schwandt and Police Chief Dan Freet

9. MU Police Chief Doug Schwandt and UMSL Police Chief Dan Freet testified at trial about their own experiences with the Rule and as expert witnesses. Together, they have nearly 70 years of law enforcement experience. Both are firearms enthusiasts, and both are unequivocally opposed to changing the Rule.

10. Chief Schwandt has been the Chief of Police at MU since March 2015. Chief Schwandt worked for the Columbia Police Department for 21 years and has worked for the last 19 years in the MU Police Department, for a total of 40 years of law enforcement experience. Defs.' Ex. 37.

11. Chief Schwandt graduated first in his class from the police academy. He has trained at the FBI Academy at Quantico and received training in special events management. Additionally, Chief Schwandt serves on the University's Campus Safety Committee, and has received the Mick Deaver Award, which is given to a University employee who has done outstanding work to foster good relations with students on campus. Tr. 309:13-313:20.

12. Chief Schwandt is a firearms enthusiast and accomplished marksman, having received the highest marksmanship score of anyone in his police academy class; having served as a firearms instructor; having been on the SWAT team; having been on a law enforcement shooting team for many years and competing in law enforcement shooting competitions in the Midwest; and having received "dozens" of marksmanship awards. Tr. 310; 312; 313.

13. Chief Schwandt testified that, "having been in law enforcement for over 40 years and dealing with the topic of firearms and being a firearms instructor and trainer and dealing with suicides and thefts and violent crime . . . I have a vast – decades of experience in this arena, and as the police chief, I guess I'm as much of an expert as anybody else when it comes to this topic." Tr. 352.

14. Chief Schwandt testified that he was "unequivocally" opposed to changing the Rule. Tr. 318.

15. Chief Schwandt testified that changing the Rule "would have nothing but adverse impacts in countless ways." Tr. 327.

16. Chief Schwandt testified that "allowing guns on the campus in any fashion will increase the chances of all kinds of situations happening." Tr. 411. He testified that "any numbers of firearms cause concern." Tr. 392.

17. Chief Schwandt testified that changing the Rule would "make the job of [MU Police] officers more difficult." Tr. 339.

18. Chief Schwandt testified that changing the Rule will "definitely lead to some numbers of crimes that we didn't have before, some numbers of accidents involving firearms that haven't happened before, to potential suicides that we haven't had to deal with on our campus." Tr. 318.

19. Chief Schwandt testified that, "having worked in the business for a long time . . . I've seen a number of accidents with firearms . . . more firearms means there is going to be more accidents with firearms." Tr. 319.

20. Chief Schwandt testified that there would be a noticeable increase in the crime rate if the Rule were changed. Tr. 331.

21. Chief Schwandt testified that "we have virtually no violent crime, no gun violence on our campus. . ." Tr. 328. He testified that there is "a strong correlation" between the Rule and the low incidence of crime on campus, Tr. 331, stating that, "we have low crime, very, very low violent crime. We have a prohibition against firearms on campus. I think there is a correlation." Tr. 376.

22. Chief Schwandt testified that changing the Rule would lead to more "gun crime" on campus. Tr. 319.

23. Chief Schwandt testified that over time, more guns on campus would lead to more guns being possessed by "people who should not have them." Tr. 338.

24. Chief Schwandt testified that "when guns are stolen, and guns are stolen all the time out of cars, they are used in crimes." Tr. 371. He said that was "not my assumption. That's my experience." Tr. 373. He testified that he was "not trying to be a prophet or anything. I'm just saying from experience, when guns are stolen, they are used in criminal ways. I dealt with it countless times." Tr. 373.

25. Chief Schwandt testified that a background check process would not alleviate his concerns. Tr. 400.

26. Chief Schwandt testified that if the Rule were changed, he would be concerned about "misidentification" in an active shooter situation on campus. Tr. 321. Specifically, Chief Schwandt testified that changing the Rule would make decision-making in an active shooter situation "more difficult" for his officers. Tr. 325. He testified that an active shooter scenario is "already a very extremely challenging arena now in the law enforcement community" and that changing the Rule would "make[] it more complex and make[] it even more difficult." Tr. 325.

27. Chief Schwandt testified that "in my mind, if you introduce guns, we're going to have more suicides." Tr. 334.

28. Chief Schwandt testified that, "I would have concerns about the guns being stored anywhere on campus except at our department." Tr. 338.

29. Chief Schwandt believes that even limiting firearms to "trunk storage" would still cause "problems." Tr. 370. Changing the Rule, which would include permitting "trunk storage," "would definitely make it not only more dangerous, but more challenging for our personnel." Tr. 339.

30. Chief Schwandt testified that the "introduction of firearms onto our college campus . . . would lead to a number of safety concerns for our community." Tr. 318. He testified that "[a]llowing guns on the campus in any fashion will increase the chances of all kinds of situations happening." Tr. 411.

31. Chief Schwandt testified that he was "passionate about not having guns on our campus," stating that, "we've had a successful model of not having firearms accidents, suicides – why would we want to change that?" Tr. 405.

32. Chief Freet has been the University of Missouri-St. Louis Police Chief for two and-a-half years, and has 28 years of law enforcement experience, including 22 years as a St. Louis County Police Officer and six years with UMSL. Defs.' Ex. 29.

33. Chief Freet has received FBI crime prevention training, as well as other training. Tr. 232.

34. Chief Freet is a self-proclaimed "pro gun person." Tr. 255.

35. Chief Freet testified that he grew up in a rural area and lives in a rural area and "my dad had me shooting guns when I was about six." Tr. 255. For him, guns are "a way of life because of where I live and because of the way my family grew up." Tr. 255.

36. Chief Freet testified that the Rule has served his campus well. Tr. 258.

37. Regarding the Rule, Chief Freet testified that target identification or "misidentification of a target" in an active shooter situation is "very much" an issue for him. Tr. 248; 252. As he testified, "I can't imagine the poor policeman having to live with accidentally shooting the wrong person." Tr. 252.

38. Chief Freet testified that he would be concerned about firearm trunk storage. Tr. 249.

39. Chief Freet testified that changing the Rule to allow a person to move a firearm from the passenger compartment to the trunk could create a "flash point," or "target misidentification" or "the hysteria effect" that could create a "mess to control." Tr. 250.

40. Chief Freet testified that more guns on campus could lead to more accidents. Tr. 251.

41. Chief Freet testified that changing the Rule "could make it more difficult for us [law enforcement]." Trial testimony. "I don't like to make it harder on them [police officers], is what I say." Tr. 258.

42. Chief Freet testified that changing the Rule could create "crimes of opportunity," Tr. 301, meaning more opportunity for theft and related crime. Tr. 302.

43. To summarize their testimony, Chief Schwandt and Chief Freet:

a. Testified that they are strongly opposed to changing the Rule. Tr. 255:24-256:1; 318:3-16.

b. Testified that firearms-related crimes and violent crimes have been low with the Rule in place. Tr. 244:11-19; 328:13-329:2.

c. Testified that the crime rate and violent crime rate on their campuses have been relatively low. Tr. 244:11-245:16; 327:22-328:4.

d. Testified that the Rule has been effective in creating a safe campus. Tr. 258:9-18; 318:7-16.

e. Testified that currently, firearms theft is not a problem on campus, but if the Rule were changed the number of firearm thefts will increase, especially from cars. Tr. 249:6-24; 319:1-3. Stolen firearms, in their opinion, are then frequently used to commit other crimes. Tr. 303:11-22.

f. Testified that currently, accidental shootings are not a significant problem on campus, but the likelihood of firearms accidents will increase if the Rule were changed. Tr. 251:10-14; 319:14-23.

g. Testified that suicides on campus are a significant concern, but that currently the incidence of firearm-related suicide is low. They testified that if the Rule were changed, the number of firearm-related suicides will likely increase. Chief Schwandt testified that campus police can often prevent a non-firearm suicide or rescue the person in time; suicide attempts by firearm, however, almost always result in death. Tr. 331:24-333:15.

h. Testified that properly managing an active shooter situation and "target misidentification" are concerns on campus. They testified that if the Rule is changed, it will make proper target identification more difficult during an active shooter situation. They testified that if, due to the presence of firearms on campus,

the police accidentally targeted the wrong person, the result would be catastrophic for the innocent person shot and for the University. Tr. 248:8-12; 325:5-23; 327:2-14.

i. Testified that currently, the Rule allows police officers to do their jobs because it is easy to administer: The police know immediately that if they see a firearm on campus, the firearm is not supposed to be there. Tr. 255:6-9. If the Rule is changed, they testified that this will increase the administrative burden on University police officers: A Rule change would make it substantially more difficult to determine who may possess a firearm on campus and will take time away from officers' other law enforcement and public safety duties. Tr. 252:4-25; 339:2-19.

j. Testified that the "response time" once campus police are called is very fast. For this reason, neither police chief thinks firearms are necessary for an individual's protection on campus. Tr. 241:4-14.

k. Testified that the Rule includes exceptions for law enforcement officers in the line of duty and for approved programs. Chief Schwandt testified that firearms are allowed on campus for programs such as ROTC, Law Enforcement Training, and a program that allows individuals to store their firearms at the campus police station. Tr. 317:13-22; 361:20-362:6.

44. Having witnessed their testimony firsthand, the Court finds Chief Schwandt's and Chief Freet's testimony credible and persuasive. They are gun enthusiasts with nearly 70 years of law enforcement experience, and they are unequivocally opposed to changing the Rule.

45. Notably, the Attorney General offered no testimony from any current or former law enforcement official.

The Statistical Evidence Presented by the Parties

The Attorney General's Statistical Expert: Dr. Carlisle Moody

46. At trial, the Attorney General called only one witness: Dr. Carlisle Moody, a statistician and professor at the University of William and Mary. Tr. 66:1-4.

47. Dr. Moody's statistical opinions arguably corroborate the law enforcement testimony of Chief Schwandt and Chief Freet and the testimony of the University's statistical expert Dr. John Donohue, infra. Even giving Dr. Moody's opinions their most favorable construction, they are at best inconclusive and do not provide the Court with a basis for second-guessing law enforcement and finding the Rule unconstitutional.

48. Dr. Moody generated an expert witness report (the "Report") and a supplement to the Report (the "Supplement"). Dr. Moody's Report contains four models designed to determine whether allowing firearms on college campuses affects violent crime statistics. See generally Pl.'s Ex. 2 (the Report) and Pl.'s Ex. 3 (the Supplement). Dr. Moody used the FBI definition of "violent crime," which includes the crimes of murder, rape, robbery and assault. Tr. 94:4.

49. In the first model, Dr. Moody compared violent crime statistics at the University of Colorado at Boulder ("UC") to those at Colorado State University in Fort Collins ("CSU"). CSU started allowing concealed carry on its campus in 2003, while UC only began allowing concealed carry on its campus in 2012. Tr. 91:21-92:17.

50. Dr. Moody's first model, while not rising to the level of "statistical significance" in his opinion, showed that violent crime went up – both in absolute and in relative terms – at UC after it implemented the policy allowing concealed carry on its campus. Pl.'s Ex. 2 at 6; Tr. 133:7-9. Dr. Moody testified that UC's violent crime rate was 32% higher than it should have been compared to CSU after allowing concealed carry on campus. Tr. 135:13-24.

51. Dr. Moody's second model compared violent crime statistics at UC to violent crime statistics at seven other four-year universities in the state of Colorado that allow concealed carry. Pl.'s Ex. 2 at 8-9. The purpose of this test was to try to corroborate the first test using more data. The results were the same as the first model: While not rising to the level of statistical significance in Dr. Moody's opinion, violent crime at UC went up after the school started allowing concealed carry on its campus. Thus, this second model corroborated the first. Tr. 137:12-138:8.

52. In his third model, Dr. Moody looked at national statistics to determine whether a state law requiring colleges to allow concealed carry increases the number of deaths or injuries due to firearms on campus. There were eight total states—and nine total colleges—included in Dr. Moody's third model. Pl.'s Ex. 2 at 10-12. While again not rising to the level of statistical significance in his opinion, Dr. Moody's Report showed a positive statistical correlation between allowing concealed carry on campus and an increasing number of deaths or injuries by firearm on campus. Tr. 140:4-141:4-21.

53. Dr. Moody's fourth model compared violent crime statistics from the University of Missouri-Columbia ("MU") campus to violent crime statistics from the Missouri State University ("MSU") campus. MSU officially changed its firearms policy in 2016 (it was apparently changed unofficially in 2013) to allow its employees to keep a firearm locked in their trunk on MSU property. MU does not allow employees to keep firearms locked in their trunk on MU property. The Report showed that violent crime was approximately 113% higher at MSU compared to MU after the new policy went into effect at MSU in 2016 allowing firearms in cars. Pl.'s Ex. 2 at 13-15; Tr. 146:3-7.

54. In other words, as stated earlier, all four of Dr. Moody's four models arguably support the position of the University, and not the Attorney General.

55. After his deposition, Dr. Moody generated the Supplement to his original Report. In the Supplement, Dr. Moody changed the date of the policy change (from 2016 to 2013) and also accounted for the fact that, since 2015, MU has increased the police presence on campus by approximately 5 officers per year. Tr. 114:22-115:11; 147:21-24. Dr. Moody sought to determine whether this affected his analysis of MSU's change in firearms policy. Accounting for the additional police presence, and while again not rising to the level of statistical significance in his opinion, Dr. Moody's Supplement still found that "MSU has had 73% more violent crime, since October 2013, compared to Mizzou." Pl.'s Ex. 3 at 4; Tr. 151:24-152:2.

56. Dr. Moody's Supplement also concludes that additional police is "significantly" more effective at reducing violent crime on college campuses than is allowing the possession of firearms. Pl.'s Ex. 3 at 4-5. Dr. Moody testified that, according to the results in his Supplement, it would make sense for a college that was concerned about reducing violent crime to increase the police presence. He also testified that his Report and Supplement did not indicate that allowing firearms on campus was likely to produce any improvement in safety. Tr. 119:3-120:3; 120:22-24.

57. Every test and model in Dr. Moody's Report and Supplement points in the same direction: Violent crime—again, defined by Dr. Moody to include murder, rape, robbery and assault—always increased, either in absolute or relative terms, after colleges started allowing firearms on campus, and this was true whether firearms were allowed on campus generally or possession was limited to trunk storage. Tr. 146:21-24; 155:12-21; 156:12-16; 160:18-161:9.

58. Dr. Moody's Report, Supplement and trial testimony only addressed the University's Columbia campus; he did not provide any opinions relating to the University's St. Louis campus, Rolla campus, or Kansas City campus. Tr. 148:2-8.

59. Furthermore, Dr. Moody only addressed the University's interest in reducing violent crime. Dr. Moody did not testify about any other interest the University has in the Rule. Those other interests, discussed below, include preventing firearms-related suicides; reducing accidental shootings; reducing firearms thefts; reducing the administrative burden on law enforcement; reducing the likelihood of target misidentification during active shooter situations; and promoting the academic environment of the University consistent with its mission. Tr. 65 to 67.

The University's Statistical Expert: Dr. John Donohue

60. The University called Dr. John Donohue as an expert witness. Dr. Donohue is a lawyer, statistician and professor at Stanford Law School. Defs.' Ex. 1. His research focuses on the statistical impact of laws and public policy, and he has spent decades studying the impact of firearms laws and regulations on public safety and crime. Tr. 180:8-181:8.

61. The principal topic of Dr. Donohue's testimony was his most recent paper, Right-to-Carry Laws and Violent Crime: A Comprehensive Assessment Using Panel Data and a State-Level Synthetic Control Analysis, which was published in the Journal of Empirical Legal Studies in June. Tr. 182:2-22; Defs.' Ex. 17.

62. Dr. Donohue's paper uses two statistical methods (Panel Data and Synthetic Controls) and shows that, in his opinion, over time, right-to-carry laws increase violent crime to a statistically significant degree. Specifically, under his methodology, violent crime goes up approximately 1.5% per year every year after right-to-carry laws are enacted and rates are up by approximately 14% total after ten years. Tr. 184:10-19.

63. Dr. Donohue's paper—like Dr. Moody's Report and Supplement—uses the FBI definition of "violent crime," which includes the crimes of murder, rape, robbery and assault. Defs.' Ex. 17 at 18 (Donohue000157).

64. Dr. Donohue's analysis generated outcomes with p values well below the standard 0.05 threshold, which makes them, even in Dr. Moody's view, "statistically significant" results. Tr. 230:4-12.

65. Dr. Donohue opined that theft and firearms thefts increase after passage of right to carry laws. Tr. 185, 187.

66. Dr. Donohue's results are not statistically significant until around seven years after right-to-carry laws were enacted because of a "lag" effect. Tr. 198:9-20.

67. Dr. Donohue testified that the results of Dr. Moody's Report and Supplement—that violent crime always increased in absolute or relative terms after colleges started allowing firearms on campus—were consistent with his own findings. Tr. 206:7-14. Similarly, he was not surprised that Dr. Moody did not find the impact of the change in firearms policies at universities was "statistically significant," because these policies have only been changed in the last few years and there is often a time-lag between a regulation's being implemented and being able to detect its impact at a statistically significant level. See Tr. 207:11-208:4.

68. Dr. Donohue testified that if a number of different tests all point in the same direction, as did Dr. Moody's four models, this can imply causation, even if the tests individually do not rise to the level of statistical significance. Tr. 208:16-21.

69. The Court finds that Dr. Donohue's opinions are not specific to universities, and therefore are entitled to somewhat less weight than if he had opined strictly about campus-specific statistics. His opinions are, however, statistically reliable, and his overall testimony, like that of

the Attorney General's expert Dr. Moody, corroborates the testimony of law enforcement regarding the Rule.

The University's Firsthand Experience with the Rule

70. In addition to Chief Schwandt's and Chief Freet's testimony about their firsthand experience with the Rule and the law enforcement interests achieved by the Rule, University President Mun Choi about his testified about his experience with the Rule and the academic interests advanced by the Rule.

Dr. Mun Choi

71. Dr. Mun Choi has been President of the University of Missouri System since March 2017. Previously, Dr. Choi was the Provost and Executive Vice President of the University of Connecticut; Dean of Engineering at the University of Connecticut; Head of Mechanical Engineering and Mechanics at Drexel University; and a professor at the University of Illinois at Chicago. Tr. 425:10-18.

72. As President of the University, Dr. Choi is responsible for the management of an institution that includes 75,000 students, 18,000 faculty and staff, and a $3.4 billion budget. Tr. 425:21-25. His responsibilities also include ensuring campus safety, protecting the reputation of the University, managing the financial health of the University and promoting a positive culture for learning. Tr. 426:3-17.

73. Dr. Choi testified that the Rule has been in place for decades and that, during this time, the University has had a very low crime rate on campus and the Rule has served the University well. Tr. 462:12-15. The Rule, as noted earlier, does not prohibit the possession of firearms on campus by those in the line of duty or those who are participating in official programs such as ROTC. Tr. 429:20-430:6.

74. In Dr. Choi's opinion, creating a safe environment is critical to the success of the University. Tr. 474:15-475:3.

75. Dr. Choi is opposed to changing the Rule. In reaching this opinion, Dr. Choi considered his discussions with faculty and staff; current and potential students; parents of current and potential students; the Board of Curators; and his own personal study of the issue. He also considered his discussions with elected representative groups: the Intercampus Faculty Council ("IFC") for faculty; the Intercampus Staff Advisory Council ("ISAC") for staff; and the Intercampus Student Council ("ISC") for students. Tr. 451:9-452:4; 458:4-460:3.

76. Dr. Choi testified that faculty and staff favor the Rule; current and potential students favor the Rule; the parents of current and potential students often raise concerns with him about safety on campus, and these parents view the Rule favorably. Tr. 451:9-452:4; 458:4-461:2

77. Dr. Choi testified that while members of the Board of Curators have a range of views individually, the unanimous view of the Board as a whole is that retaining the Rule is in the University's best interests. Tr. 466:21-467:6.

78. In Dr. Choi's opinion, the Rule serves the University's interest in helping students and guests feel safe and secure on campus, Tr. 448:4-12; the Rule serves the University's interest in creating a positive learning and research environment, Tr. 438:24-439:7; and the Rule serves the University's interest in developing an eminent faculty and talented staff. Tr. 447:20-24.

79. Dr. Choi's opinions are based on years of experience as a university administrator. He is the CEO of what is essentially a 93,000 person corporation with a $3.4 billion budget. The Court finds that his testimony about the Rule is credible.

80. The Attorney General did not present any evidence addressing or rebutting Dr. Choi's testimony.

CONCLUSIONS OF LAW

The Board of Curators Rule

81. The University's Board of Curators is vested with the exclusive authority to govern the University. Mo. Const. Art. IX §9(a). The Board's promulgation of the Rule, primarily designed to promote safety and the University's academic mission, is within the constitutional authority of the Board to govern the University.

Burden of Proof

82. The parties disagree about who bears the burden of proof. The Attorney General contends that the University bears the burden and the Rule is presumptively invalid, while the University contends that the Attorney General bears the burden and the Rule is presumptively valid. The Court concludes that the Attorney General bears the burden of proof, but even if the Court found that the University had the burden of proof, the University met that burden of proof based on the evidence adduced at trial.

83. Article 1, § 23 of the Missouri Constitution provides in pertinent part that "restriction[s] on [the right to bear arms] shall be subject to strict scrutiny."

84. The Missouri Supreme Court has held that laws and regulations reviewed under Article 1, § 23 are not presumptively invalid. Dotson v. Kander, 464 S.W.3d 190, 198 (Mo. 2015) ("[T]he addition of strict scrutiny to the constitution does not mean that laws regulating the right to bear arms are presumptively invalid as [Judge Teitelman's] dissent suggests."); accord id. at 204 (Fischer, J., concurring) ("Judge Teitelman's dissenting opinion also claims that legislative restrictions on the right to bear arms are now presumptively invalid as a result of the adoption of strict scrutiny . . . . This stands at odds with the well-settled legal standard for constitutional challenges: A statute is presumed valid and will be declared unconstitutional only if the challenger

proves the statute 'clearly and undoubtedly violates the constitution.'") (citations and alterations omitted)).[1]

85. This principle—that Article 1, § 23 does not shift the burden of proof to the proponent of the law or regulation—has been reaffirmed in every subsequent Missouri Supreme Court case addressing the issue. Alpert v. State, 543 S.W.3d 589, 595 (Mo. 2018) (holding in challenge to a statute under Article 1, § 23 that "[t]his Court will presume the statute is valid and will not declare [it] unconstitutional unless it clearly contravenes" Article 1, § 23 (citation omitted)); State v. Clay, 481 S.W.3d 531, 533 (Mo. 2016) (same); State v. Merritt, 467 S.W.3d 808, 814 (Mo. 2015) ("It is clear that laws regulating the right to bear arms are not presumptively invalid." (citation omitted)); State v. McCoy, 468 S.W.3d 892, 897 (Mo. 2015) (same).

86. These cases make clear, then, that in an Article 1, § 23 case, the party challenging the law or regulation bears the burden of proof, and that the Rule in this case is not presumptively invalid. However, even if the University had the burden of proof, or even if the burden shifted to the University, Witte v. Director of Revenue, 829 S.W.2d 436 (Mo. banc 1992), the University sustained that burden in this case.

87. The analysis does not change merely because it is a University rule at issue rather than a state law or regulation. That is because "the Board of Curators of the University of Missouri is invested by constitutional mandate as a public entity with the status of a governmental body." Krasney v. Curators of Univ. of Mo., 765 S.W.2d 646, 649 (Mo. Ct. App. 1989) (emphasis added); see also Article IX, § 9(a) ("The government of the state university shall be vested in a board of

---

[1] These statements were necessary to the Supreme Court's holding, as they were made in response to, and as a direct rejection of, Judge Teitelman's contrary view: "Here, the unmistakable plain language meaning of the term 'strict scrutiny' is that, for the first time in Missouri history, any attempt to regulate firearms, ammunition or accessories is presumptively invalid." Dotson, 464 S.W.3d at 216 (Teitelman, J., dissenting).

curators consisting of nine members appointed by the governor, by and with the advice and consent of the senate."); Mo. Rev. Stat. § 172.100 ("The curators shall have power to make such bylaws or ordinances, rules and regulations as they may judge most expedient for the accomplishment of the trust reposed in them"). Accordingly, the University's Rule is entitled to the same deference that any other state law or regulation is entitled to under Article 1, § 23.

88. As a trial court, this Court is bound by the governing Missouri Supreme Court decisions, which clearly and explicitly hold that laws and regulations touching "the right to bear arms are [not] presumptively invalid." Dotson, 464 S.W.3d at 198. The Louisiana cases relied on by the Attorney General, on the other hand, hold that laws and regulations touching the right to bear arms are presumptively invalid. State in Interest of J.M., 144 So.3d 853, 860 (La. 2014) ("Where strict judicial scrutiny is required, a state is not entitled to the usual presumption of validity" (quotation marks omitted)). While the Missouri Supreme Court may have found these Louisiana cases instructive in some respects, it clearly did not follow them on the issue of which party bears the burden of proof.[2]

89. For these reasons, the Court finds that the Attorney General bears the burden of proof and, in this case, he has failed to sustain it. Furthermore, even if the University bears the burden of proof, the Court finds that the University has sustained that burden.

---

[2] Notably, at the hearing in this case on the Parties' respective motions for judgment on the pleadings on July 25, 2018, the Deputy Attorney General, in addressing the University's Motion, stated

> "So this [passage in Dotson] is really responding to text in the dissent which is saying, Oh, my goodness, the passage of [the 2014 amendment to Article 1, § 23] has now created presumptively invalid laws. Not at all. **They are presumptively valid**, but they are still subject to strict scrutiny analysis, and that's the important point, Your Honor."

7/25/18 Hearing Tr. 102:2-7 (emphasis added).

The Right to Bear Arms Applies on University Property, and Strict Scrutiny Analysis Applies to the Rule

90. As the Court previously held in denying in part the University's Motions and Cross-Motions for Judgment on the Pleadings, the Court disagrees with the University's contention that the right to bear arms does not apply on University property and finds that the right to bear arms does, in fact, apply on University property.

91. The Court is not convinced that the two 19th Century cases relied on by the University – State v. Wilforth, 74 Mo. 528 (1881) and State v. Shelby, 90 Mo. 302 (1886) – established that the right to bear arms does not apply on apply on University property.

92. Although the Court recognizes that Justice Scalia stated that there are places such as schools and government buildings where there are so-called "longstanding prohibitions" on the carrying of firearms, Dotson, 464 S.W.3d at 198 (quoting District of Columbia v. Heller, 554 U.S. 570, 626-27 (2008), the Court concludes that the Rule is nonetheless subject to constitutional review. The Court again rejects the University's theory that universities can regulate firearms without any constitutional scrutiny.

93. The Missouri Supreme Court has held that the "central purpose" of the 2014 amendment to Article 1 § 23 was "not to change the right to bear arms, but to make certain 'declarations' about that right." Dotson, 464 S.W.3d at 199-200, and that the 2014 amendment did not "add[] a new right to the Constitution," but "simply enshrined the status quo as to the right to bear arms." Clay, 481 S.W.3d at 536.

94. However, the Missouri Supreme Court also recognized the right to bear arms as a "fundamental right" and that strict scrutiny is required to analyze the constitutionality of "any regulation" of that right. Dotson, 464 S.W3d 190, 196-97 (Mo. banc 2015) (per curiam). And, the

plain language of Article 1, Section 23 provides that "[a]ny restriction on these rights shall be subject to strict scrutiny."

95. The Court, therefore, again disagrees with the University and finds that the right to bear arms applies on University property and further finds that strict scrutiny analysis applies to the Rule.

Based on the Evidence at Trial, The Rule Satisfies All Formulations of Strict Scrutiny Analysis

96. The Missouri Supreme Court has held that what "strict scrutiny" means depends on context:

> "There is no settled analysis as to how strict scrutiny applies to laws affecting the fundamental right to bear arms, which has historically been interpreted to have accepted limitations. Additionally, the application of strict scrutiny depends on context, including the controlling facts, the reasons advanced by the government, relevant differences, and the fundamental right involved."

Merritt, 467 S.W.3d at 813 (emphasis added; citations and alterations omitted); accord Clay, 481 S.W.3d at 535 (noting that Merritt and its companion case, McCoy, 468 S.W.3d 892, declined "to determine which strict scrutiny test applies to the right to bear arms").

97. In this case, the Rule satisfies strict scrutiny review regardless of what constitutes "strict scrutiny."

The Rule Is Narrowly Tailored to Achieve Compelling Interests

98. One formulation of the "strict scrutiny" standard is that the law or regulation must be "narrowly tailored to achieve a compelling interest." Dotson, 464 S.W.3d at 197 (citation omitted).

99. The Rule satisfies this iteration of strict scrutiny. Under this analysis, the testimony of the police chiefs in support of the Rule, bolstered by the statistical evidence from both sides, demonstrates that the Rule is narrowly tailored to achieve compelling interests.

100. The Court, moreover, is reluctant to invalidate the Rule based on what is, at best for the Attorney General, inconclusive statistical evidence versus the law enforcement evidence and statistical evidence adduced by the University.

101. The University adduced ample evidence at trial demonstrating that it has a compelling interest in the safety and welfare of students, employees and visitors on its property, and even the Attorney General acknowledges that the University has a compelling interest "in ensuring public safety and reducing firearm-related crime." Second Am. Pet. ¶ 48.

102. Chief Schwandt and Chief Freet themselves identified and testified at length about the University's compelling interests advanced by the Rule.

103. The unrebutted testimony from the police chiefs, supported by the statistical evidence, was that changing the Rule is likely to negatively affect safety on campus. Chief Schwandt, for example, testified that changing the Rule "would have nothing but adverse impacts in countless ways." Tr. 327. In fact, the Attorney General's own evidence suggests that violent crime would increase on the University's campuses if firearms were allowed, whether on the campus generally or only in locked cars.

104. The University also has a compelling interest in minimizing theft on its property, including the theft of firearms. The unrebutted testimony from the police chiefs and the statistical testimony was that changing the Rule would likely increase theft on campus. Chief Schwandt, for example, testified that changing the Rule would "definitely lead to" an increase in the crime rate on campus. Tr. 318.

105. The University also has a compelling interest in minimizing accidental injuries on its property. The evidence in this case, including the testimony from the police chiefs, was that firearms accidents would likely increase if the Rule were changed. Chief Schwandt, for example, testified that he had "worked in the business for a long time," and based on his experience, believed that changing the Rule would result in more firearms accidents.

106. The University also has a compelling interest in the safety of its students and in preventing suicides. The law enforcement testimony was that changing the Rule would increase the likelihood of suicides on campus.

107. As Chief Schwandt and Chief Freet testified, the Rule is easy to administer, allowing police officers to readily determine when someone should not have a firearm on campus and allowing the officers to do their jobs and keep the community safe. Tr. 252, 339.

108. As Chief Schwandt and Chief Freet also testified, the University has a compelling interest in effectively identifying the proper suspect in the event of an active shooter situation. The unrebutted testimony from Chief Schwandt and Chief Freet was that the presence of firearms on campus would increase the chances of "target misidentification;" would make an active shooter situation on campus more dangerous; and would make law enforcement's job in an active shooter situation more difficult, thus increasing the likelihood of injuries or deaths on campus. As Chief Schwandt testified, changing the Rule would make an active shooter situation "more complex and make it even more difficult" for his officers. Tr. 325.

109. For these among other reasons, Chief Schwandt, as the chief law enforcement officer on the MU campus, testified that he was "unequivocally" opposed to changing the Rule. Tr. 318.

110. The unrebutted testimony at trial also established that the University has a compelling interest in creating an environment that the University concludes is most conducive to its academic mission. See Regents of the University of California v. Bakke, 438 U.S. 265, 311-12 (1978) ("It is the business of a university to provide that atmosphere which is most conducive" to its academic mission); Fisher v. University of Texas, 136 S.Ct. 2198, 2214 (2016) ("Considerable deference is owed to a university in defining those intangible characteristics . . . that are central to its identity and educational mission."). What constitutes an "environment" that is "conducive to an academic mission" is not a matter for the Court to determine independently of the evidence adduced at trial. The evidence in this regard came from President Choi, who testified that the Rule helps create a positive learning and research environment; serves the University's interest in developing an eminent faculty and talented staff; and, in his opinion, helps students and guests feel safe and secure on campus.

111. The Attorney General did not present any evidence addressing Dr. Choi's testimony or suggesting that these were not compelling interests of the University.

112. The Rule also satisfies the "narrow tailoring" requirement of this aspect of strict scrutiny analysis.

113. If the Report and Supplement generated by the Attorney General's own expert Dr. Moody support any party in this case, it is the University. Dr. Moody ran four statistical tests, and each one showed that violent crime increased, either in absolute or relative terms, on campus after firearms were allowed, and this was true whether firearms possession was allowed generally or was limited to firearms stored in a car. Dr. Moody's Report and Supplement thus align with the opinion of Chief Schwandt and Chief Freet and the University's statistical expert, Dr. Donohue.

114. This is the definition of narrow tailoring: The University's Rule is appropriately tailored to its compelling interests, because all the evidence in this case – arguably including even the Attorney General's evidence – points to the conclusion that changing the Rule will affect the safety of University campuses.

115. Again, the testimony of the police chiefs was persuasive and essentially unrebutted. Chief Schwandt, a gun enthusiast and accomplished marksman with 40 years of law enforcement experience, testified that he was "unequivocally" opposed to changing the Rule. Chief Freet, who describes himself as "pro gun" and has nearly 30 years of law enforcement experience, was also opposed to changing the Rule. They testified at length and in detail as to why and how the Rule was appropriately and narrowly tailored in furtherance of the University's compelling interests, and why and how those interests would be thwarted if the Rule were modified.

116. Again, the Court is not free to disregard the evidence, but must reach a judgment based solely on the evidence before it.

117. Even considering Dr. Moody's statistical opinions in their most favorable light, the most the Attorney General has shown is that prohibiting firearms on college campuses has not been demonstrated to decrease violent crime in a "statistically significant" way. But, to withstand analysis under Article 1, § 23, a "statistically significant" relationship between the regulation and the asserted interest is wholly unnecessary. Indeed, statistics alone—no matter what they show—cannot prove non-compliance with Article 1, § 23. Merritt, 467 S.W.3d at 814 n.6 ("[T]he ever-changing body of science and statistics is ill-suited to constitutional analysis.").

118. It follows that the Attorney General cannot demonstrate that the Rule contravenes Article 1, § 23 by only presenting statistical evidence that suggests, even if it does not prove, that allowing firearms on a college campus causes violent crime to increase. Where a number of

different tests all point in the same direction—which Dr. Moody's all did—this can imply causation, even if the tests individually do not rise to the level of statistical significance.

119. The University is also not required to narrow the scope of the Rule. In Alpert, the Missouri Supreme Court summarized how the narrow tailoring analysis works under Article 1, § 23:

> "[In Merritt, McCoy, and Clay,] this Court recognized the prohibition on felons possessing firearms was longstanding. This Court explicitly held section 571.070 was narrowly tailored despite not being restricted to violent or dangerous offenders, having no temporal limit, and restricting possession by all felons, even types of possession posing no safety risk. This Court rejected the notion section 571.070 prohibited self-defense. This Court also declined to find section 571.070 required procedural safeguards for judicial review to determine whether the felon posed an actual danger to the public by possessing a firearm to pass constitutional muster. This Court held section 571.070 was not underinclusive because it did not apply to misdemeanants and other offenders likely to commit violent offenses. Finally, this Court recognized statistics do not bear on the constitutional analysis of section 571.070's validity because they prove nothing about the law's design."

543 S.W.3d at 597 (citations and alterations omitted; emphases added).

120. Additionally, "narrow tailoring 'does not require exhaustion of every . . . conceivable alternative.'" Merritt, 467 S.W.3d at 815 (quoting Grutter v. Bollinger, 539 U.S. 306, 339 (2003)).

121. In this framework, the Court finds no lack of narrow tailoring from the fact that the Rule applies to both CCW holders and non-CCW holders; or that it applies to employees and non-employees; or that it prevents concealed carrying across the University's campuses as well as the storing of firearms in the trunk of a locked vehicle on the University's campuses.

122. As stated earlier, Chief Schwandt and Chief Freet testified credibly and persuasively in support of the Rule. Both Chiefs testified that the Rule is tailored to promote safety, reduce crime, reduce suicides, reduce accidents and assist their officers in doing their jobs. Again, Chief Schwandt's and Chief Freet's testimony was credible and persuasive.

123. As Chief Schwandt and Chief Freet testified, in their opinion the Rule is easy to administer: The police know immediately that if they see a firearm on campus, the firearm is not supposed to be there. In their opinion, changing the Rule would make it significantly more difficult for law enforcement to determine who may possess a firearm on campus, which would also take time away from the officers' other law enforcement duties. Again, their testimony was that the Rule essentially helps police officers do their jobs.

124. It also bears repeating that all the affirmative evidence the Attorney General presented in this case shows that violent crime could increase on campuses after firearms are allowed, whether possession is limited to trunk storage (as in Dr. Moody's MSU v. MU comparison) or applied more broadly (as in Dr. Moody's other comparisons). Again, the Court is not free to disregard this evidence.

125. Lastly, the Attorney General presented no evidence undermining the University's academic reasons for the Rule as testified to by Dr. Choi. Again, it is not for the Court to decide independently of the evidence as to what is or is not the mission of a university, and what advances or impedes that mission. If Dr. Choi had testified that more firearms on campus would enhance the University's mission and learning environment, the Court would give that testimony as much weight as the testimony that Dr. Choi actually gave in this case. Here, in Dr. Choi's opinion, based on his decades of work in higher education, the Rule advances fundamental academic interests of the University. In the absence of other evidence, and given his decades of experience in higher education administration, the Court accepts Dr. Choi's opinions as valid and reliable.

126. The Court also notes that the constitutionally-empowered Board of Curators has the right to make judgments to protect these interests. Cf. Fisher, 136 S. Ct. at 2214 ("Considerable deference is owed to a university in defining those intangible characteristics . . . that are central to

its identity and educational mission." (citation omitted)). In the absence of evidence to the contrary, the Court gives some deference to those judgments, just as the Court is not free to second guess the police chiefs in the absence of contrary evidence.

127. Under Merritt, McCoy, Clay, and Alpert, therefore, the Rule satisfies a compelling interest/narrow tailoring strict scrutiny review.

The Rule Imposes Reasonable, Non-Discriminatory Restrictions Serving Important Regulatory Interests

128. Regarding another formulation of "strict scrutiny," the Missouri Supreme Court has also held that

> "depending on the extent the regulation burdens a particular right, the courts look to whether a regulation imposes 'reasonable, non-discriminatory restrictions' that serve 'the State's important regulatory interests' or whether the encroachment is 'significant.'"

Clay, 481 S.W.3d at 535 (citations omitted).

129. The Rule satisfies this iteration of strict scrutiny as well.

130. As an examination of the Rule shows:

a. The Rule does not affect the possession of firearms in the home, which is the core of the right to bear arms. Heller, 554 U.S. at 628 (holding that the home is "where the need for defense of self, family, and property is most acute"); accord United States v. Masciandaro, 638 F.3d 458, 470 (4th Cir. 2011) ("[A]s we move outside the home, firearm rights have always been more limited, because public safety interests often outweigh individual interests in self-defense.").

b. Unlike the felon-in-possession statute, which prohibits firearms possession for a certain class of people entirely and yet has been upheld repeatedly in Article 1, § 23 challenges, the Rule only prohibits the possession of firearms on University

property for persons not in the line of duty or participating in approved programs. Cf. Alpert, 543 S.W.3d at 597 (holding felon-in-possession law constitutional even though "Missouri has no mechanism for the restoration of rights absent a pardon or expungement"). In other words, it is not an outright prohibition of all firearms.

131. Based on the law enforcement and other evidence adduced at trial, the Rule also imposes "'reasonable, non-discriminatory restrictions" that serve "important interests":

a. The Rule is reasonable, according to the police chiefs, because University police are able to respond quickly to threats, and the Rule likewise provides exceptions for approved University programs like ROTC, Law Enforcement Training, and the storing of firearms at the University police station.

b. The Rule is non-discriminatory: It applies to everyone on a University campus not in the line of duty or participating in an approved program.

c. The Rule serves "important" interests: As Chief Schwandt and Chief Freet testified, and as the Attorney General concedes, the University has a compelling interest "in ensuring public safety and reducing firearms-related crime," Second Am. Pet. ¶ 48, and, in the opinion of Dr. Choi, the Rule also advances academic interests of the University.

d. The Rule applies only on University property, and it does not apply to persons in the line of duty or participating in approved programs.

"Long History" or "Substantial Consensus"

132. In some cases, "a long history" or "a substantial consensus" may be "sufficient evidence for [] a strict scrutiny review." Merritt, 467 S.W.3d at 814 (citation omitted).

133. Though the evidence in this regard is less persuasive than the evidence as examined under the other strict scrutiny analyses, the Court finds that the Rule satisfies this analysis as well.

134. The Rule has been in place for some time. In the absence of evidence from the Attorney General, it was certainly the consensus of Chief Schwandt and Chief Freet that the Rule should not be changed. In addition, based on the evidence at trial, a significant consensus in higher education supports the University's approach to firearms regulation: All but one four-year public university in Missouri prohibits the possession of firearms on campus, and for decades, the majority of colleges and universities nationally have prohibited the possession of firearms on campus. Tr. 165:15-16; Defs.' Ex. 47. Eight states require state colleges and universities to allow concealed carry on their campus. Pl.'s Ex. 2.

135. Assuming that this iteration of strict scrutiny applies, the Rule satisfies this standard as well.

CONCLUSION

136. Under Missouri Supreme Court precedent, in an Article 1, § 23 case, the party challenging the law or regulation bears the burden of proof.

137. Here, even if the University bears the burden of proof, it has sustained that burden.

138. The Rule is subject to strict scrutiny.

139. The Court finds that the Rule satisfies strict scrutiny and is constitutional.

140. The Court enters judgment for the University on all remaining Counts of the Attorney General's operative Petition.

141. Costs are taxed to the Attorney General.

11-18-19

Judge Jeff Harris, Div. 2

COURT SEAL OF CIRCUIT COURT OF MISSOURI BOONE COUNTY