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Victory in Missouri, Again—Sort Of

Regular readers will know that we won a “by the skin of our teeth” victory in Missouri last year with a non-discretionary concealed weapon permit law. After the legislature passed a pretty good concealed weapon permit law, Governor Holden vetoed it. Both houses of the legislature overrode his veto. Adding to the drama, State Senator Jon Dolan—a National Guard member on active duty in Guantanamo Bay, Cuba—flew home. We needed 23 votes in the State Senate to override Holden’s veto, and Dolan’s vote was the 23rd.¹

At this point, everyone assumed that Missouri would put its new concealed weapon permit law into effect as so many other states have done. Instead, gun control advocates in Missouri filed suit, asking the courts to block the new law. The most amazing of their claims was that the Missouri legislature lacked authority to license carrying of concealed weapons. The gun controllers insisted that the state constitution’s right to keep and bear arms provision *completely* prohibited concealed carry, and therefore the legislature lacked authority to pass a licensing law.

Another objection that this suit raised was that the state required counties to process concealed weapon applications—which costs the counties money—without providing any funding. Under Missouri law, the state is restricted in its power to impose what are called “unfunded mandates” on local governments.²

¹ Terry Ganey, “Missouri will allow hidden weapons,” *St. Louis Post-Dispatch*, September 11, 2003.

² Cheryl Wittenauer, “Hearing begins on concealed-guns flap,” *St. Louis Post-Dispatch*, October 22, 2003, available at http://www.wmsa.net/news/StLouis-PostDispatch/pd-031022_flap.htm, last accessed February 28, 2004.

A St. Louis judge agreed, and issued an injunction against the new law. The Missouri Attorney-General appealed. Eventually, the decision worked its way up to the Missouri Supreme Court, which issued its decision on February 26. It was a victory for our side, although with a few rough edges that still need sanding.

The Missouri Constitution's right to keep and bear arms provision states: "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." The gun control forces had claimed that "but this shall not justify the wearing of concealed weapons" meant that it was unlawful to do so, and that even the legislature could not change this.

On the major question—does the Missouri legislature have the authority to license concealed carrying of weapons—the Missouri Supreme Court had no difficulty finding for our side. "The words of the last clause are plain and unambiguous. Read in proper grammatical context, and giving the words their common usage, this clause does not prohibit wearing concealed weapons. Rather, it prohibits a person from invoking the constitutional right to keep and bear arms as a justification for wearing concealed weapons. The general assembly, therefore, retains its plenary power to enact legislation regarding the use and regulation of concealed weapons."

On the "unfunded mandates" question, however, the Court decided that the legislature was exceeding its authority. Counties are free to refuse to issue permits, and taxpayers may file suit to prevent a county from issuing permits.³ In practice, this means

³ *Brooks et. al. v. State of Missouri*, case SC85674 (Mo. 2004), available at <http://www.osca.state.mo.us/Courts/PubOpinions.nsf/0f87ea4ac0ad4c0186256405005d3b8e/b14dae00e29160d186256e4600666f47?OpenDocument>, last accessed February 28, 2004.

that either the state legislature will have to provide funding to the counties, or the county governments will have to decide on their own to fund the permit process.

So, does this mean we lost, because counties aren't required to issue permits? Well, no. There are a number of provisions of the new law that the Missouri Supreme Court pointed out have nothing to do with "unfunded mandates." The Court observed that, "Certain provisions of the concealed-carry act do not implicate the Hancock amendment, are not affected by any unfunded mandate under Hancock and, therefore, are not subject to injunctive relief."

For example, the law prohibiting concealed carry "shall not apply to any person who has... a valid permit or endorsement to carry concealed firearms issued by another state or political subdivision of another state."⁴ This is even true for Missouri residents—although I don't think that was the legislature's intention. If you live in one of the Missouri counties that won't issue a permit, apply to Florida, or one of the other states that issues to non-residents. The Missouri legislature is already hard at work correcting the "unfunded mandates" problem, and I would expect within a few months, this will not be an issue.

There is one final amusing point to all this. When the gun control forces asked for an injunction to prevent the new law from taking effect, businesses that were setting up to provide firearms training protested that this was going to interfere with their livelihood. Therefore the court required the gun control groups to put up a bond of

⁴ RSMo § 571.030, available at <http://www.house.state.mo.us/bills03/biltxt/truly/HB0349T.HTM>, last accessed September 13, 2003.

\$250,000 to compensate businesses injured by the delay.⁵ It appears from the Missouri Supreme Court decision that the courts will now decide how much of this bond to distribute to our side.

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⁵ “‘Permanent’ Court Injunction Halts Conceal and Carry Permits,” *Memphis Democrat*, November 13, 2003, available at http://www.memphisdemocrat.com/2003/news/031113_guns.shtml, last accessed November 16, 2003.