IN THE
SUPREME COURT OF MISSOURI

STATE OF MISSOURI,	)	
	)	
Appellant,	)	
	)	
vs.	)	SC94936
	)	
RAYMOND ROBINSON,	)	
	)	
Respondent.	)	

APPEAL TO THE SUPREME COURT OF MISSOURI
FROM THE CIRCUIT COURT OF THE CITY OF ST. LOUIS,
TWENTY-SECOND JUDICIAL CIRCUIT,
DIVISION EIGHTEEN,
THE HONORABLE ROBERT H. DIERKER, JR., JUDGE

RESPONDENT'S BRIEF

Patrick Kutz
Missouri Bar No. 66023
Assistant Public Defender
1114 Market Street, Ste. 602
St. Louis, MO 63101
Tel. (314) 340-7625
Fax (314) 340-7595
Email: Patrick.Kutz@mspd.mo.gov

Attorney for Respondent

INDEX

TABLE OF AUTHORITIES

Cases

Rules and Statutes

Other Authorities

Constitutional Provisions

JURISDICTIONAL STATEMENT

The instant case involves the validity and constitutionality of Missouri Revised Statute § 571.070 (2008) in light of the recently amended Article I, § 23 of the Missouri Constitution (amended 2014). This Court has jurisdiction because "[t]he Missouri Supreme Court has exclusive appellate jurisdiction in cases involving the validity of a statute or provision of the constitution of this state." *Damon v. City of Kansas City*, 419 S.W.3d 162, 174 (Mo. App. W.D. 2013).

STATEMENT OF FACTS

Respondent, Raymond Robinson, is a fifty-five-year-old single man who lives in North St. Louis City and requires a cane to walk as a result of a chronic hip injury. (L.F. 7, 26; Tr. 28). Respondent supported himself by doing rehabilitation work on old doors and windows for churches and residential buildings in the community for cash payment. (L.F. 26; Tr. 27). Because Respondent at times carried amounts of cash on him from his job, he owned a handgun for personal protection. (L.F. 29). On July 28, 2014, Respondent was arrested at Fairgrounds Park in St. Louis during the early evening hours after police officers received an anonymous tip that he was in possession of a pistol. (L.F. 7, 10). After being placed under arrest by a police officer for an outstanding municipal warrant, Respondent admitted that he had a firearm in his work van and granted the officer permission to search the vehicle. (L.F. 26).

A complaint was filed the following day on July 29, 2014. (L.F. 26) On November 5, 2014, after a preliminary hearing, the defendant was formally charged by information with one count of Unlawful Possession of a Firearm under Missouri Revised Statute § 571.070.1. (L.F. 7-9, 26). The information charged that Respondent was knowingly in possession of a .380 semi-automatic handgun on July 28, 2014, and that he had previously been convicted of the felony of Unlawful Use of a Weapon on April 3, 2003. (L.F. 7).

Respondent filed a motion to dismiss the sole count on January 12, 2015, alleging that § 571.070.1 was unconstitutional because it infringed on his right to bear arms

enshrined in the Second Amendment to the United States Constitution and the recently amended Article I, § 23 of the Missouri Constitution. (L.F. 10). Specifically, Respondent argued that Missouri Revised Statute § 571.070.1 was unconstitutional on its face and as applied to Respondent because the statute contained no exceptions for nonviolent offenders and no temporal limitation. (L.F. 12) For these reasons, Respondent argued, § 571.070.1 failed constitutional muster under the strict scrutiny standard required by Article I, § 23 of the Missouri Constitution, which requires that any limitation on a fundamental right be narrowly tailored to serve a compelling government interest. (L.F. 11-12). Considering the significant length of time between Respondent's sole prior felony conviction and the current charge, and the fact that Respondent's sole prior felony conviction for Unlawful Use of a Weapon was not a crime of violence, he argued that § 571.070.1 was not narrowly tailored as applied to him. (L.F. 12, 13).

Respondent and the State of Missouri argued these points before the Honorable Robert H. Dierker, Jr. on January 14, 2015. (Tr. 3-24). Following arguments on the record, the trial court took the motion under submission and on February 27, 2015, the trial court granted Respondent's motion to dismiss. (Tr. 23-25). The trial court subsequently filed a Memorandum, Order, and Judgment explaining the reasoning of the dismissal. (L.F. 25).

First, the trial court held that Respondent had standing because there was sufficient evidence in the record to infer that he was a citizen. (L.F. 28). Second, the trial court held that the revised Article I, § 23 governed the case even though the case

commenced prior to the effective date of the revised Article I, § 23. (L.F. 31-32). Although the trial court held that § 571.070 was constitutional on its face because there were circumstances in which the statute can be constitutionally applied, it held that § 571.070 was unconstitutional as applied to Respondent because it fails to differentiate among classes of felonies, fails to define criteria to assess the future dangerousness of non-violent felons, and fails to impose any standard of proof before stripping a nonviolent felon of his constitutional right to keep and bear arms. (L.F. 32, 33, 39). The trial court found nothing in the record to suggest any misuse of weapons by Respondent in the last ten years, and that Respondent's risk of re-offending was low. (L.F. 39). The trial court further found that Respondent's age and physical condition militate against an undertaking of violent offenses. (L.F. 39). Specifically, the trial court found Respondent did not present a demonstrable risk to the safety of any individual or the public. (L.F. 39).

The dismissal was stayed for thirty days to allow the State to petition the Missouri Supreme Court for a writ of prohibition. (L.F. 41-42). However, the State's petition for a writ of prohibition was denied without hearing. *See State ex rel State of Missouri v. Hon. Robert H. Dierker*, SC94868 (filed on Mar. 19, 2015, denied on Mar. 27, 2015). Subsequently, the State filed a Notice of Appeal in the instant case on April 7, 2015.

POINTS RELIED ON

I. The trial court did not err in dismissing Count I of the information, the felon-in-possession-of-a-firearm charge against Respondent, because the trial court correctly held that Missouri Revised Statute § 571.070.1 was unconstitutional as applied to Respondent in the instant case because Respondent is not a convicted violent felon as is now required under Article I, § 23 of the Missouri Constitution.

MO. CONST. art. I, § 23

MO. REV. STAT. § 571.070 (2008)

II. The trial court did not err in dismissing Count I of the information, the felon-in-possession-of-a-firearm charge, against Respondent, because Missouri Revised Statute § 571.070.1 is unconstitutional as applied to Respondent in that the Second Amendment to the United States Constitution requires that any limitations on the right to bear arms be subject to strict scrutiny analysis and § 571.070.1 is overbroad and not narrowly tailored to serve a compelling government interest.

U.S. CONST. amend. II

MO. REV. STAT. § 571.070 (2008)

ARGUMENT

I

The trial court did not err in dismissing Count I of the information, the felon-in-possession-of-a-firearm charge against Respondent, because the trial court correctly held that Missouri Revised Statute § 571.070.1 was unconstitutional as applied to Respondent in the instant case because Respondent is not a convicted violent felon as is now required under Article I, § 23 of the Missouri Constitution.

A. Standard of Review

"Whether a statute is constitutional is an issue of law that this Court reviews *de novo*." *State v. Honeycutt*, 421 S.W.3d 410, 414 (Mo. 2013), as modified (Dec. 24, 2013) (citing *State v. Vaughn*, 366 S.W.3d 513, 517 (Mo. banc 2012).

B. Respondent is not a violent convicted felon

The trial court correctly held that Missouri Revised Statute § 571.070.1 (2008) was unconstitutional as applied to Respondent, Raymond Robinson, because he is not a convicted violent felon as is now required under the plain language of Article I, § 23 of the Missouri Constitution.

"While a court will read a constitutional provision broadly, it cannot ascribe a meaning that is contrary to that clearly intended by the drafters." *Farmer v. Kinder*, 89 S.W.3d 447, 452 (Mo. banc 2002). "Rather, a court must undertake to ascribe to the words of a constitutional provision the meaning that the people understood them to have

when the provision was adopted." *Id.* (citing *Boone County Court v. State*, 631 S.W.2d 321, 324 (Mo. banc 1982)). "The meaning conveyed to voters is presumptively the ordinary and usual meaning given the words of the provision." *Id.* "This Court must assume that every word contained in a constitutional provision has effect, meaning, and is not mere surplusage." *State v. Honeycutt*, 421 S.W.3d 410, 415 (Mo. 2013), as modified (Dec. 24, 2013) (citing *City of Arnold v. Tourkakis*, 249 S.W.3d 202, 206 (Mo. banc 2008)).

The previous version of Article I, § 23 stated the following: "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 civil power, shall not be questioned; but this shall not justify the wearing of concealed weapons." MO. CON., art I, § 23 (1945).

On August 4, 2014, Missouri voters overwhelmingly passed Constitutional Amendment 5, which amended Article I, § 23 of the Missouri Constitution's Bill of Rights to read, in part, as follows:

> That the right of every citizen to keep and bear arms… in defense of his home, person, family and property… shall not be questioned…. Any restriction on these rights shall be subject to strict scrutiny…. Nothing in this section shall be construed to prevent the general assembly from enacting general laws which limit the rights of convicted violent felons or those adjudicated by a court to be a danger to self or others as result of a mental disorder or mental infirmity.

Mo. Con., art I, § 23 (amended 2014).

The relevant portion of Missouri Revised Statute § 571.070.1.1 (2008) provides that:

> A person commits the crime of unlawful possession of a firearm if such person knowingly has any firearm in his or her possession and (1) Such person has been convicted of a felony under the laws of this state, or of a crime under the laws of any state or of the United States which, if committed within this state would be a felony.

Although Missouri law has defined a dangerous felony, there is currently no accepted legal definition of what a violent felony is under Missouri law. *See* MO. REV. STAT. § 556.061(8) (2006) (for the definition of a dangerous felony). However, according to Black's Law Dictionary, the term "violent" is defined as: 1) "[o]f, relating to, or characterized by strong physical force"; 2) "[r]esulting from extreme or intense force"; 3) "[v]ehemently or passionately threatening[.]" BLACK'S LAW DICTIONARY 1801 (10th ed. 2014). A "violent crime" is defined as "[a] crime that has an element the use, threatened use, or substantial risk of use of physical force against the person or property of another." *Id.* at 453. Finally, a "violent offense" is defined as "(a) crime characterized by extreme physical force, such as murder, forcible rape, and assault and battery with a dangerous weapon." *Id.* at 1252.

"[A] felon convicted of a minor, non-violent crime might show that he is no more dangerous than a typical law-abiding citizen." *United States v. Barton*, 633 F.3d 168, 174 (3rd Cir. 2011). "Similarly, a court might find that a felon whose crime of conviction is decades-old poses no continuing threat to society." *Id.* The North Carolina Supreme Court did just that in *Britt v. State*, 363 N.C. 546 (2009), finding that a felon convicted in 1979 of one count of possession of a controlled substance with intent to distribute had a constitutional right to keep and bear arms…." *Id.* The Seventh Circuit, in *United States v. Yancey*, stated, "most felons are nonviolent." 621 F.3d 681, 685 (7th Cir. 2010) (citing *United States v. Lane*, 252 F.3d 905, 906 (7th Cir. 2001)).

This Court cannot treat the language regarding the ability of the legislature to pass laws to limit the rights of violent convicted felons as mere surplusage as required by *Honeycutt*. Rather, the Court must give effect and take into consideration each word contained in the amendment. And because an ordinary and usual definition of violent, violent crime, and violent offense exist as noted above, the Court should use these definitions to give meaning to the provisions contained in Article I, § 23 of the Missouri Constitution.

Further, because the trial court held that Missouri Revised Statute § 571.070.1 (2008) was unconstitutional as applied to Respondent and did not hold that the statute was unconstitutional on its face, it is important to consider the individual characteristics of Respondent when deciding whether barring Respondent from possessing a firearm

infringes on his constitutional right to bear arms under Article I, § 23 of the Missouri Constitution. (amended 2014).

Although Respondent may not be a "model citizen," he is by no means a violent or dangerous individual. (L.F. 26) Respondent has only one prior felony conviction from 2003 for Unlawful Use of a Weapon – Carrying a Concealed Weapon. (L.F. 7). This prior felony is over ten years old. Respondent's prior conviction cannot be considered violent because the act of simply possessing a firearm contains no element of strong, physical, intense, or extreme force as noted in the definition of violent crime. Further, Respondent's prior conviction does not fall under the violent offense definition which includes murder, forcible rape, and assault and battery with a dangerous weapon. Respondent has no record of violent felonies or mentally unstable behavior. (L.F. 27)

There is nothing in the record to indicate that Respondent has misused weapons in the last ten years or has used weapons in the furtherance of crimes. (L.F. 39). Respondent stated that he carried a firearm "for protection due to the cash basis on which he does work." (L.F. 27) Additionally, the trial court notes that Respondent's "age and physical condition militate against undertaking violent offenses such as robbery or assault." (L.F. 39). The trial court also found that Respondent did not present a demonstrable risk to the safety of any individual or the public. Respondent is not a threat to society. Importantly, Appellant never even alleges that Respondent is a violent felon or that Unlawful Use of a Weapon – Carrying a Concealed Weapon is a violent felony. Therefore, this matter is not in dispute.

Respondent is not a violent felon because his only prior did not involve the use of force and Respondent is not a danger to society or the type of individual that Article I, § 23 aims to keep from possessing a firearm. Respondent is an older, partially disabled gentleman who carried a firearm in order to protect himself and his property from others while performing his job in the City of St. Louis.

C. *District of Columbia v. Heller* does not stand for the proposition that banning felons from possessing firearms withstands strict scrutiny

Appellant relies on *District of Columbia v. Heller* as an example of a ban on all felons possessing firearms passing constitutional muster. 554 U.S. 570 (2008) (Appellant's Brief, page 18-19). However, the Court in *Heller* specifically declined to hold that the Second Amendment to the United States Constitution should be subject to strict scrutiny analysis. *Id.* at 634 ("[Justice Breyer] criticizes [the majority] for declining to establish a level of scrutiny for evaluating Second Amendment restrictions"). In fact, The Supreme Court in *Heller* stated that the Washington D.C. law in question, which prohibited an entire class of arms within the home for self-defense, would "fail constitutional muster" under any standard of scrutiny the Supreme Court has applied to enumerated constitutional rights. *Id.* at 628.

Other courts have tried to decipher the level of scrutiny called for in *Heller*. "Thus, assuming that the majority [in *Heller*] did not fashion a new standard or abandon the 'level of scrutiny' framework altogether, it must have found that either strict or

intermediate scrutiny was appropriate." *United States v. Miller*, 604 F. Supp. 2d 1162, 1170 (W.D. Tenn. 2009).

In *McDonald v. City of Chicago*, the United States Supreme Court held that the "Framers and ratifiers of the Fourteenth Amendment counted the right to keep and bear arms among those fundamental rights necessary to our system of ordered liberty." 561 U.S. 742, 778 (2010). Therefore, the Court held "that the Due Process Clause of the Fourteenth Amendment incorporates to the states the Second Amendment right recognized in *Heller* (the right to possess a handgun in the home for the purpose of self-defense)." *Id.* at 791.

The assertion by the United States Supreme Court that the Washington D.C. law in question would fail to meet constitutional muster under any level of scrutiny means that the law in question in *Heller* would fail constitutional muster under rational basis review, intermediate scrutiny, and most obviously strict scrutiny. And given that the Supreme Court refused to establish a level of scrutiny for Second Amendment claims in *Heller*, the Court's statement in dicta regarding the longstanding prohibition on the possession of firearms by felons not being affected by its decision does not imply that this prohibition withstands strict scrutiny review as required under Missouri law. *See Heller, 554* U.S. 570 at 626. Further, the assertion in *Miller* that either intermediate or strict scrutiny must apply to the right to bear arms under the Second Amendment shows that not all courts have followed strict scrutiny review following *Heller*.

The refusal by the United States Supreme Court's majority in *Heller* to establish a level of scrutiny for evaluating Second Amendment restrictions meant that the door was left open for states to define the appropriate level of scrutiny that should apply to the right to bear arms in defense of one's home or person. By amending Article I, § 23 of the Missouri Constitution, it was the intent of the legislators and citizens of Missouri to answer the critical question that was left open in *Heller* and *McDonald* regarding what level of scrutiny should apply to an individual's right to bear arms in self-defense.

D. Because Article I, § 23 of the Missouri Constitution goes further in its protection of the right to bear arms and is not coextensive with the United States Second Amendment, this Court must analyze § 571.070.1 under the more expansive text of the Missouri Constitution

"The states are free to offer criminal defendants greater protection through their laws than the Constitution requires, but they cannot offer less." *State v. Bolin*, 643 S.W.2d 806, 810 (Mo. 1983) (citing *Oregon v. Haas*, 420 U.S. 714, 719 (1975); *Sibron v. New York*, 392 U.S. 40, 61 (1968); *Cooper v. California*, 386 U.S. 58, 62 (1967)). This Court has recognized that "[p]rovisions of our state constitution may be construed to provide more expansive protections than comparable federal constitutional provisions." *State v. Rushing*, 935 S.W.2d 30, 34 (Mo. banc 1996). In *Rushing*, this Court found that the United States Fourth Amendment and the section of the state constitution in question that protected from unreasonable searches and seizures were coextensive because they

were nearly identical. *Id.* at 34 (citing *State v. Jones*, 865 S.W.2d 658, 660 (Mo. banc 1993)). Because of the nearly identical text of the United States Fourth Amendment and its state counterpart, this Court found the United States Supreme Court's construction of the Fourth Amendment "strongly persuasive." *Id.* at 34 (citing *State v. Blankenship*, 830 S.W.2d 1, 14 (Mo. banc 1992).

However, the text of article I, § 23 of the Missouri Constitution is not only different from the text of the Second Amendment to the United States Constitution, but also significantly more expansive in its protections compared to its federal counterpart. The Second Amendment to the United States Constitution reads as follows: "A well 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."

Therefore, this Court cannot rely solely on the interpretation of the Second Amendment set out in *Heller* and *McDonald* because the state and federal provisions are not coextensive. Rather, Article I, § 23 of the Missouri Constitution calls for a significant expansion of the right to bear arms in defense of one's home, person, family and property, by requiring that any restriction on these rights "shall be subject to strict scrutiny." MO. CON., art. I, § 23 (amended 2014). This Court must interpret the amendment to Missouri's constitution based on the language of the amended Article I, § 23 of the Missouri Constitution, which calls for strict scrutiny review while at the same

time acknowledging the ability of the legislature to pass laws preventing convicted violent felons from possessing firearms.

Article I, § 23 of the Missouri Constitution, not the Second Amendment to the United States Constitution, should inform the court in interpreting the constitutionality of Missouri Revised Statute § 571.070.1 (2008) because the rights contained in the Missouri Constitution are more expansive than those contained in the Second Amendment.

E. Missouri Revised Statute § 571.070.1 must be analyzed under the strict scrutiny test as it infringes on one's fundamental right to keep and bear arms under Article I, § 23 of the Missouri Constitution.

The meaning of strict scrutiny should take on its traditionally understood legal meaning. When there is a legal or technical meaning to the words in a constitutional provision, that is the meaning those words must be given. *State v. Honeycutt*, 421 S.W.3d 410, 415 (Mo. 2013). Missouri uses a strict scrutiny test when analyzing statutes that impinge on a fundamental right under the Equal Protection Clause. *Weinschenk v. State*, 203 S.W.3d 201, 210 (Mo. banc 2006). In that test, "[t]he first step is to determine whether the statute implicates a suspect class or impinges upon a fundamental right explicitly or implicitly protected by the Constitution." *Id.* (citing *Etling v. Westport Heating & Cooling Services, Inc.*, 92 S.W.3d 771, 774 (Mo. banc 2003); accord *Kadrmas v. Dickinson Public Schools*, 487 U.S. 450, 457-58 (1988)). "If so, the classification is subject to strict scrutiny." *Id.* (citing *Etling*, 92 S.W.3d at 774).

"In order to survive strict scrutiny, a limitation on a fundamental right must serve compelling state interests and must be narrowly tailored to meet those interests." *Id.* (citing *Komosa v. Komosa*, 939 S.W.2d 479, 482 (Mo. App. E.D. 1997)); *see also Manifold v. Blunt*, 863 F.2d 1368, 1373 (8th Cir. 1988) ("The application of strict scrutiny… involves a two-part analysis: the restriction must be necessary to serve a compelling interest, and may not go beyond what the state's interest actually is.").

Strict scrutiny has a longstanding and traditionally understood meaning in Missouri jurisprudence and the legal definition, not the plain meaning, of the term should control. Because this test has been used in many courts analyzing constitutional challenges to felon disarmament statutes and because Missouri uses a similar test with other constitutional challenges involving a fundamental right, this Court must apply strict scrutiny analysis to the right to bear arms. The restriction on any nonviolent felon's right to bear arms contained in Missouri Revised Statute § 571.070.1 must be necessary to serve the compelling interest of preventing crime and promoting public safety, and the limitation may not go beyond what the state's interest actually requires.

In applying the strict scrutiny standard, this Court must find that preventing all felons from possessing firearms is the least restrictive way to promote the compelling government interest of preventing crime and promoting public safety. The text of Article I, § 23 conveniently lays out the least restrictive way to achieve the compelling government interest of crime prevention and public safety, which is to bar violent

convicted felons and those who are a danger to themselves or others as a result of a mental disorder from possessing firearms.

In the instant case, there is no evidence on the record to suggest that preventing Respondent from possessing a firearm in self-defense is the least restrictive way to achieve public safety or prevent crime. In fact, the limitation as applied to Respondent goes far beyond what the state's interest in promoting public safety and preventing crime require. By including the provision in Article I, § 23 that allows the general assembly to pass laws preventing convicted violent felons from possessing firearms, the Missouri Constitution sets forth the least restrictive way to promote public safety and prevent crime. And that is to prevent convicted violent felons from lawfully possessing firearms. If the legislators or voters of Missouri believed that the least restrictive way to promote public safety and prevent crime was to forbid both nonviolent and violent convicted felons from possessing firearms as is currently the case under § 571.070.1, they would have put language in the amended Article I, § 23 reflecting that belief. As the trial court properly notes, "[i]f the drafters and voters who approved the revised [Article I, § 23] considered that a blanket prohibition on felons in possession of firearms was unaffected by the revision, why include the express proviso convicted violent felons?" (L.F. 37). The trial court goes on to state that "[b]y including the express exception for violent felons, the people implicitly demanded something more to justify a prohibition applicable to all felons." (L.F. 37). This demand has not been satisfied by the current § 571.070.1.

Further, the Court must consider whether § 571.070.1 is narrowly tailored as applied to Respondent. Importantly, when the trial court considered whether Respondent posed a risk to public safety or the commission of future crime, it concluded there "was not any reason to find that the defendant presents a demonstrable risk to the safety of any individual or of the public." (L.F. 39). The trial court also found that Respondent's age and physical condition militate against an undertaking of violent offenses and that Respondent's risk of re-offending is low. (L.F. 39).

The blanket prohibition on all felons possessing firearms contained in § 571.070.1 is not narrowly tailored as applied to Respondent because it does not represent the least restrictive means of achieving the compelling government interest of promoting public safety and preventing crime.

F. Neither Louisiana Revised Statute § 14.95.1 or the Bail Reform Act at issue in *Salerno* support Appellant's position that Missouri Revised Statute § 571.070.1 is narrowly tailored to serve a compelling government interest.

Although Appellant cites *State v. Eberhardt* as an example of a statute barring felons from possessing firearms withstanding strict scrutiny, the statute in Louisiana considered in *Eberhardt* withstood strict scrutiny because it was narrowly tailored. The Louisiana statute defined the class of violent felons barred from possessing firearms under the law and contained temporal limitations. 145 So.3d 377 (La. 2014). The Court in *Eberhardt* held the following:

> We conclude that LSA-R.S. 14:95.1 serves a compelling governmental interest that has long been jurisprudentially recognized and is grounded in the legislature's intent to protect the safety of the general public from felons convicted of specified serious crimes, who have demonstrated a dangerous potential threat of further or future criminal activity…. Further, the law is narrowly tailored in its application to the possession of firearms or the carrying of concealed weapons for a period of only ten years from the date of completion of sentence, probation, parole, or suspension of sentence, and to only those convicted of the enumerated felonies determined by the legislature to be offenses having the actual or potential danger of harm to other members of the general public. Under these circumstances, we find "a long history, a substantial consensus, and simple common sense" to be sufficient evidence for even a strict scrutiny review.

Id. at 385 (citations omitted).

La. Rev. Stat. § 14:95.1 (2014) makes it unlawful for individuals to possess a firearm if they were previously convicted of one of several crimes deemed violent. *Id.* at 381. These crimes include burglary, felony illegal use of weapons or dangerous instrumentalities[1], manufacture of bombs and incendiary devices, possession of a firearm

[1] Under Louisiana law, "[i]llegal use of weapons or dangerous instrumentalities is the intentional or criminally negligent discharging of any firearm… where it is foreseeable

while in the possession of controlled substances, felony violation of controlled substance law, and any crime which is defined as a sex offense. *Id.* Furthermore, the Louisiana statute specifies that its ban on possessing firearms does not apply to people who have been convicted of one of these crimes more than ten years ago. *Id.* at 382.

Appellant also relies on *United States v. Salerno* to defend the notion that the blanket prohibition preventing felons from possessing firearms is narrowly tailored to serve a compelling state interest. 481 U.S. 739 (1987). However, this reliance is misplaced.

In *Salerno*, the United States Supreme Court held that the "governments interest in preventing crime… is both legitimate and compelling." *Id.* at 749 (citing *De Veau v. Braisted*, 363 U.S. 144, 155 (1960)). However, the Supreme Court also notes that the Bail Reform Act in question in *Salerno* "narrowly focuses on a particularly acute problem in which the Government interests are overwhelming." *Id.* The Court goes on to state that the Bail Reform Act (which authorized pretrial detention of certain individuals deemed dangerous) "operates only on individuals who have been arrested for a specific category of extremely serious offenses." *Id.* at 750. Further, the Bail Reform Act required the Government to have a "full-blown adversary hearing" where the

---

that it may result in death or great bodily harm to a human being." LA. REV. STAT. § 14:94 (2014).

Government must convince a neutral decision maker that "no conditions of release can reasonably assure the safety of the community or any person." *Id.*

The *Salerno* decision did not actually apply strict scrutiny analysis because the court declined to hold that pretrial liberty of a criminal defendant was a fundamental right. *Id.* at 751 (citing *Snyder v. Massachusetts*, 291 U.S. 97, 105 (1934)). However, the decision makes it clear that the provisions of the Bail Reform Act, which require the Government to show the arrestee poses a demonstrable danger to the community in a formal hearing, are the exact narrow set of circumstances where "society's interest in crime prevention is at its greatest." *Id.* at 750.

The Louisiana law discussed in *Eberhardt* stands in stark contrast to Missouri Revised Statute § 571.070.1, because the Louisiana statute differentiates between types of felons in its prohibition of possessing a firearm whereas the Missouri statute does not. (2008). Under § 571.070.1, there is no time period in which an individual can regain his right to carry a firearm as a felon as there is under the Louisiana statute. For these reasons, § 571.070 cannot be equated to the Louisiana statute because it is not narrowly tailored in that it contains no exceptions or exemptions whatsoever. Instead, it results in a blanket prohibition for any individual who has ever been convicted of any felony no matter how long ago and no matter what the circumstances were surrounding that felony.

Additionally, if Respondent in the instant case were subject to the Louisiana statute that was held to withstand strict scrutiny, he would not fall under its purview.

Respondent's only prior felony, for Unlawful Use of a Weapon – Carrying Concealed, was committed over ten years ago. Respondent's prior conviction for having a concealed weapon would not fall under the prohibition contained in the Louisiana statute either. Although the Louisiana statute prohibits those convicted of illegal use of a weapon from carrying a firearm, the Louisiana illegal use of a weapon statute criminalizes the intentional or criminally negligent discharge of a firearm, not the mere possession of a firearm.

The problem with Appellant's reliance on *Salerno* is that while the case does stand for the proposition that the government has a compelling interest in preventing crime and public safety, the Bail Reform Act at issue was indeed much more narrowly tailored to serve the compelling interest in preventing crime and public safety than § 571.070. Unlike the Bail Reform Act, that applied to a narrow and specific category of serious offenders, § 571.070.1 contains an all-encompassing ban on any felon from possessing a firearm without exceptions. This ban applies no matter the severity of the previous offense the individual pled to or was found guilty of. Furthermore, the individual circumstances of the prior offense are not taken into account and there exists no individualized screening process to assess the violence of an individual.

G. The few and narrow exceptions to felons possessing firearms contained in § 571.070.1 noted by this Court in *Merritt* and cited by Appellant do not amount to sufficient narrow tailoring as required under strict scrutiny review.

This Court notes in *State v. Merritt* that Missouri Revised Statute § 571.070.1 does not apply to misdemeanors or "felony convictions that have been pardoned or expunged (although expungement would not be available for Merritt's federal conviction). It does not apply to possession of antique firearms. And it does not prevent self-defense–just possessing firearms." 2015 WL 4929765, at *6 (Mo. Aug. 18, 2015). Appellant argues that because those who receive a suspended imposition of sentence and successfully complete probation are not convicted felons under the law, that their ability to possess firearms supports narrow tailoring. (Appellant's Brief page 20 (citing *Hoskins v. State*, 329 S.W.3d 695, n.3 (Mo. banc 2010) (explaining that a suspended imposition of sentence is not a final judgment or conviction unless probation is revoked))).

First, the suspended imposition of sentence example cited by Appellant goes to the actual sentencing of those found guilty of a felony, not to the propensity of those individuals to commit violent gun crimes. For example, an individual who commits his first violent crime, such as voluntary manslaughter, and is granted a suspended imposition of sentence, can regain the right to carry a firearm. However, an individual who has a felony conviction for non-payment of child support would not be able to

lawfully possess a firearm. Furthermore, these exceptions fail to include such nonviolent felonies such as Stealing third offense, felony non-payment of child support, or other nonviolent offenses that are decades old. *See* MO. REV. STAT. §§ 570.040 and 568.040 (2000).

Additionally, expungement in Missouri only applies to the felony charges of passing a pad check, fraudulently stopping payment of an instrument, and fraudulent use of a credit or debit device. *See* MO. REV. STAT. § 610.140.1.2 (2012). This exception does not represent the least restrictive and most narrowly tailored way to achieve the compelling government interest of preventing firearm related crime. And although § 571.070.1 does not apply to felons possessing an antique firearm, the ability to possess a firearm produced before 1898 is not a significant enough exception to claim that the statute is narrowly tailored. *See* Mo. Rev. Stat. § 571.010(1)(a) (2008). After all, it is nearly impossible for one to utilize such an antique firearm in defense of his home, family, person, and property, as called for by Article I, § 23 of the Missouri Constitution. (amended 2014).

For these reasons, the exceptions for felons possessing firearms under Missouri law are not the least restrictive way to achieve the compelling government interest of crime prevention and promoting public safety. Rather, they are severely under-encompassing and fail to sufficiently compensate for the blanket ban on the possession of firearms by nonviolent felons contained in § 571.070.1.

H. Although this Court's decisions in Merritt and McCoy analyze the right to bear arms under strict scrutiny analysis, those holdings are not controlling in the instant case because both cases were decided under the old Article I, § 23 of the Missouri Constitution.

Prior to Amendment 5, this Court did not hear any challenges to the felon-in-possession law in which it applied a particular level of scrutiny. *Dotson v. Kander*, 464 S.W.3d 190, 197 (Mo. banc 2015).[2] In *Dotson*, however, this Court stated in a footnote that, "[b]ecause this Court reviews laws affecting fundamental rights under the strict scrutiny standard, strict scrutiny would have applied under the Missouri constitution had a challenge been made." *Dotson v. Kander*, 464 S.W.3d 190, 197 n.5 (Mo. banc 2015). This Court stated that because the United States Supreme Court in *McDonald* declared the right to bear arms to be a fundamental right,[3] strict scrutiny would have applied under Missouri law following the *McDonald* decision because "[t]his Court reviews laws affecting fundamental rights under the strict scrutiny standard." *Id.* (citing *Etling v. Westport Heating & Cooling Servs., Inc.*, 92 S.W.3d 771, 774 (Mo. banc 2003)).

---

[2] This Court stated in *Dotson*, "[i]t is true that neither the Supreme Court of the United States nor this Court has delineated a level of scrutiny for the right to bear arms." 464 S.W.3d 190, 197 (Mo. banc 2015).

[3] The Supreme Court in *McDonald* determined that "the right to keep and bear arms [is] among those fundamental rights necessary to our system of ordered liberty," *McDonald v. City of Chicago, Ill*, 561 U.S. 742, 778 (2010).

In *Merritt*, this Court held that Missouri Revised Statute § 571.070.1 survived strict scrutiny review under the prior version of Article I, § 23 of the Missouri Constitution. 2015 WL 4929765, at *3 (Mo. Aug. 18, 2015). However, the pre-amendment version of Article I, § 23 did not contain the provisions that relate to strict scrutiny or the language discussing the ability of the legislature to limit the rights of convicted violent felons from possessing firearms. *See* Mo. Con., art I, § 23 (1945). Therefore, this Court's holding in *Merritt* upholding § 571.070.1 under the prior version of Article I, § 23 does not control the instant case because this Court did not consider or analyze the significant expansion of the right to bear arms contained in the newly amended version of Article I, § 23 of the Missouri Constitution. (amended 2014). As noted above, the new language contained in Article I, § 23 cannot be treated as mere surplusage by this Court, but rather the language must be given effect and meaning.

I. The recently amended Article I, § 23 of the Missouri Constitution applies to Respondent's case because it was resolved after the effective date of the amendment.

The amendment to Article I, § 23, commonly referred to as Amendment 5, was voted on and passed on August 5, 2014. It became effective on September 5, 2014. MO. CON., article I, § 23 (amended 2014). Respondent filed a Motion to Dismiss based on the unconstitutionality of Missouri Revised Statute § 571.070.1 (2008) and the Second Amendment to the United States Constitution, which was filed on January 12, 2015, well after the effective date of the amendment.

In *State v. Merritt*, this Court found that the amendment did not apply because those cases had already been finally decided by circuit court judges prior to the passage of Amendment 5. 2015 WL 4929765, at *3 (Mo. Aug. 18, 2015) (*See also State v. McCoy*, 2015 WL 4930615 (Mo. Aug. 18, 2015)). Here, the instant case was still pending during the passage of Amendment 5, and the amendment became effective before there was a final determination. This does not amount to a retrospective application of Article I, § 23 of the Missouri Constitution. Therefore, when the circuit court reviewed the instant case, the amendment was applicable and correctly applied to the instant case.

J. While the State may have a compelling interest in promoting public safety by preventing future crime and protecting the public, preventing Respondent from possessing a firearm is not the least restrictive way of achieving this interest.

Appellant states, "[t]he State has a compelling interest in preventing future crime and protecting the public…." (See Appellant's Brief page 16). Respondent does not disagree. However, "[i]t is not enough to show that the Government's ends are compelling; the means must be carefully tailored to achieve those ends." *Sable Commc'ns of California, Inc. v. F.C.C.*, 492 U.S. 115, 126 (1989).

The studies, newspaper articles, and websites cited by Appellant do not support the position that blanket prohibitions on felons possessing firearms are causally or closely connected to a reduction in future crime or an increase in public safety.

For example, Appellant cites an article stating that 138 of the 159 homicides in St. Louis were committed with firearms and that "13,000 people have been the victim of a gun crime in the City of St. Louis." (See Appellant's Brief page 16-17). However, the statement regarding the amount of homicides committed using firearms is not backed up by any study cited by Appellant. This statement is a quote from the elected St. Louis City Prosecutor, Jennifer Joyce, who has opposed Amendment 5 from the onset and has a direct stake in the instant case. *See* Chris King, *Joyce leads delegation to study No Violence Alliance*, ST. LOUIS AM., February 26, 2015, *available at* http:www.stlamerican.com/news/local_news/ar ticle_ecd120d6-bd60-11er-8644-cb284db66f5e.html (last visited Sep. 20, 2015).

Furthermore, the homicide statistics cited by Appellant do not differentiate between homicides committed with a firearm and those committed without a firearm. *See* ST. LOUIS METROPOLITAN POLICE DEPARTMENT, *St. Louis Crime Statistics*, *available at* http://www.slmpd.org/crime_stats.shtml (it is also significant that the statistics for robbery only note whether a weapon was used (not specifically a gun) and the forcible rape statistics do not indicate if a gun was used). The statement that 13,000 people have been the victim of gun violence is also not supported by statistical data. *See* ST. LOUIS GUN CRIME, *available at* stlouisguncrime.com/#!the-victims/c24u (last visited Sep. 21, 2015) (stating there were 13,000 victims of gun violence over the past five years in St. Louis without providing a source to support that assertion).

Appellant also relies on a study of DNA databases in New York and Florida to support the claim that the "majority of defendants with database hits on cases involving homicides or rape were already in the DNA database for prior non-violent felony convictions." (*See* Appellant's Brief page 17 (citing Edwin Zedlewski & Mary B. Murphy, *DNA Analysis for "Minor" Crimes: A Major Benefit for Law Enforcement*, 253 NAT'L INST. JUST. J. 2, 4 (2006)). This statistic does not support the assertion that individuals who commit burglaries or other non-violent crimes are more likely to engage in future violent behavior. It merely suggests that those who committed these violent crimes also happened to have prior convictions for nonviolent offenses.

Additionally, Appellant cites a study that purports to show a "reduction in risk for later criminal activity of approximately 20% to 30% from the denial of handgun purchases to convicted felons." (*See* Appellant's Brief page 17 (citing Mona A. Wright, Garen J. Wintermute, and Frederick P. Rivara, *Effectiveness of Denial of Handgun Purchase to Persons Believed to Be at High Risk for Firearm Violence*, 89 AM. J. PUB. HEALTH 88, 89 (1999)). However, the authors of this article go on to state that "[i]n terms of some potentially important differences in risk for later criminal activity, this study was too small to determine whether the differences occurred by chance." *Id.* This is because the study size of convicted felons only consisted of 170 individuals. *Id.* at 88. In other words, the sample size was too small to determine if the decrease in criminal activity was attributable to the lack of access to a firearm, some other factor, or simply to chance. This is hardly enough to support the proposition that barring all felons from

possessing firearms is narrowly tailored under Article I, § 23 of the Missouri Constitution.

Appellant further contends that the ban on all felons possessing firearms contained in Missouri Revised Statute § 571.070 is narrowly tailored and relies in part on a 2004 study by the Department of Justice that found among "non-violent" releases, about 1 in 5 were rearrested for a violent crime within 3 years of discharge. U.S. DEP'T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, *Profile of Nonviolent Offenders Exiting State Prisons*, 2, *available at* http://www.ojp.usdoj.gov/bjs/pub/pdf/pnoesp.pdf (2004). However, Appellant ignores the finding contained in the study that among nonviolent releases, approximately one third had a history of arrests for violent crimes and one in five had a self-reported history of convictions for violent crimes. *Id.* at 1. The "nonviolent" releases that were a part of this study had the following characteristics: 22% had a prior violent conviction, 64% committed the current offense while on parole, and 65% had two or more prior prison sentences. *Id.* at 2. Perhaps most importantly to the instant case, two-thirds of the individuals who were part of this study were under the age of thirty-four. *Id.* at 1. Further, only 1.6% of the individuals released in 1997 that were part of this study were over the age of fifty-five. *Id.* at 2.

First, it is important to consider that individuals with a violent prior conviction (22% of the individuals in this study) would not be eligible for gun possession under the proper interpretation of Article I, § 23, which bans violent convicted felons from lawfully possessing firearms. Additionally, merely being arrested for a violent crime does not

mean that the individual is actually charged with or found guilty of a violent crime. This study also does not contain recidivism numbers for individuals who were not committed to prison as a result of their non-violent felony offense, which would presumably be lower than those who were sentenced to prison for a variety of factors discussed above. Importantly, Respondent in the instant case is fifty-five years old. (L.F. 7).

Respondent's age group is barely represented in this study at all. Although there are no numbers contained in this study which break down recidivism by age group, older age is often associated with a lower rate of recidivism. *See* STATE OF MO. DEP'T OF CORR. BD. OF PROB. AND PAROLE, *Procedures Governing the Granting of Paroles and Conditional Releases,* Appendix B (April 2009) *available at* http://doc.mo.gov/Documents/prob/BlueBookAppendices5-06.pdf (last visited Sep. 21, 2015) (The chart shows the Salient Factor Scale, which grants individuals over the age of forty-five a score of positive two, decreasing the amount of time served before being eligible for parole). The parole guidelines define salient factors as "[f]actors that have been determined by research to be predictive of an individual's success or failure on parole." *Id.* at 3. In fact, a score of positive two is the highest attainable score of any factor that is taken into account. *Id.* at Appendix B. Although this scale is used in the context of a parole setting and is not directly analogous to the instant case, it shows that individuals of increased age are considered less likely to re-offend than their younger counterparts.

In assessing the utility of the studies offered by Appellant, the trial court correctly observed that "none of the State's studies appears to establish more than a correlation, and correlation is not causation." (L.F. 36) "[T]hey do no more than show a rational basis for the prohibition at issue here." (L.F. 37). "The State does not show that its studies controlled for variables such as the precise nature of prior offenses, the age or personal circumstances of the defendant at the time of the weapons offenses and at the time of the later violent offense, or any of the other myriad factors that may be characteristic of future dangerousness." (L.F. 37).

Narrow tailoring does not mean that a mere correlation between prior nonviolent felonies and a propensity to commit future violent offenses is sufficient. Rather, the ban at issue here, which strips all felons of their right to bear arms, must be the least restrictive way to achieve the compelling government interest of crime prevention and promoting public safety. Appellant has failed to show this is the case. Banning nonviolent felons from possessing firearms, namely Respondent, not only fails to promote public safety and prevent crime, but also strips Respondent of a deeply rooted right in the history of our state and nation. That is the right to bear arms in defense of one's person, home, family, and property.

II

The trial court did not err in dismissing Count I of the information, the felon in possession of a firearm charge, against Respondent, because Missouri Revised Statute § 571.070.1 is unconstitutional as applied to Respondent in that the Second Amendment to the United States Constitution requires that any limitations on the right to bear arms be subject to strict scrutiny analysis and § 571.070.1 is overbroad and not narrowly tailored to serve a compelling government interest.

Respondent's request to the trial court to dismiss the charge of felon in possession of a firearm alleged, inter alia, that § 571.070.1 was unconstitutional under the Second Amendment to the United States Constitution. (L.F. 10). The Second Amendment's protection of the right to keep and bear arms is considered a fundamental right necessary to our system of ordered liberty. "In sum, it is clear that the Framers and ratifiers of the Fourteenth Amendment counted the right to keep and bear arms among those fundamental rights necessary to our system of ordered liberty." *McDonald v. City of Chicago*, 561 U.S. 742, 778 (2010). Fundamental rights included in the Bill of Rights apply not only to the Federal Government, but also to the States. *Id* at 791 (citing *Duncan v. Louisiana*, 391 U.S. 145, 149 n. 14 (1968)). "We therefore hold that the Due Process Clause of the Fourteenth Amendment incorporates the Second Amendment right recognized in *Heller*." *Id.*

The Second Amendment right recognized in *Heller* is the right of law-abiding, responsible citizens to use arms in defense of hearth and home. *District of Columbia v.*

Heller, 554 U.S. 570, 635 (2008). Any statute impinging upon that right must be evaluated to determine if it is constitutional.

Missouri Revised Statute § 571.070.1 (2008) provides:

> A person commits the crime of unlawful possession of a firearm if such person knowingly has any firearm in his or her possession and (1) Such person has been convicted of a felony under the laws of this state, or of a crime under the laws of any state or of the United States which, if committed within this state, would be a felony; or (2) Such person is a fugitive from justice, is habitually in an intoxicated or drugged condition, or is currently adjudged mentally incompetent.

The restrictions placed upon the possession of a firearm in Missouri Revised Statute § 571.070.1(1) (2008), as applied to felons, are overbroad and do not withstand the strict scrutiny analysis necessary when state legislation impinges upon a fundamental right. "Courts undertake a two-part analysis to determine the constitutionality of a statute under either the state or federal equal protection clause. The first step is to determine whether the statute implicates a suspect class or impinges upon a fundamental right explicitly or implicitly protected by the Constitution. *Etling v. Westport Heating & Cooling Services., Inc.*, 92 S.W.3d 771, 774 (Mo. banc 2003); accord *Kadrmas v. Dickinson Public Schools*, 487 U.S. 450, 457–58 (1988). 'If so, the classification is subject to strict scrutiny.'" *Weinschenk v. State*, 203 S.W.3d 201, 210-11 (Mo. 2006).

Under strict scrutiny analysis, the statute being challenged must be necessary to accomplish a compelling state interest and must be narrowly tailored to accomplish that

purpose. *Doe v. Phillips*, 194 S.W.3d 833, 846 (Mo. banc 2006). The state has the burden of proving that those legislative restrictions on a fundamental right are narrowly tailored measures that further compelling state interests. *Johnson v. California*, 543 U.S. 499, 505 (2005).

Missouri's felon in possession of a firearm law applies to all persons convicted of a felony. It does not exempt or exclude persons based upon the fact that the felony conviction did not involve any type of violence, the date of the conviction, or the felon's rehabilitation since the conviction. The statute acknowledges no instance in which a convicted felon may need to possess a firearm, such as defense of his home, person, family or property. The statute does not differentiate between persons who were convicted of a felony in the past and are now law abiding, responsible citizens. The felon- in-possession-of-a-firearm law, as applied to persons who are mentally incompetent, on the other hand, require a current finding of that mental incompetence. Once that current finding of mental incompetence has lapsed, the right to possess a firearm returns.

As noted in Point I above, the findings of the trial court are that Respondent is a law abiding responsible citizen and possessed a firearm in defense of his person and property. (L.F. 39, 27).

Appellant directs the Court to Louisiana's felon-in-possession-of-a-firearm statute as an example of a statute that has withstood strict scrutiny and argues that Missouri's statute falls within the same classification. The Louisiana statute, however, was found to

be narrowly tailored in that it defined the class of violent felons who would be barred from possessing firearms under the law. *State v. Eberhardt*, 145 So.3d 377 (La. 2014). The Court in *Eberhardt* held the following:

> We conclude that LSA-R.S. 14:95.1 serves a compelling governmental interest that has long been jurisprudentially recognized and is grounded in the legislature's intent to protect the safety of the general public from felons convicted of specified serious crimes, who have demonstrated a dangerous potential threat of further or future criminal activity…. Further, the law is narrowly tailored in its application to the possession of firearms or the carrying of concealed weapons for a period of only ten years from the date of completion of sentence, probation, parole, or suspension of sentence, and to only those convicted of the enumerated felonies determined by the legislature to be offenses having the actual or potential danger of harm to other members of the general public. Under these circumstances, we find "a long history, a substantial consensus, and simple common sense" to be sufficient evidence for even a strict scrutiny review.

Id. at 385 (citations omitted).

Louisiana Revised Statute § 14:95.1 made it unlawful for people who were convicted of one of several crimes deemed violent to possess a firearm. *Id.* at 381. The Louisiana statute specifies that its ban on possessing firearms does not apply to people

who have been convicted of any of the enumerated offenses more than ten years ago. *Id.* at 382.

Further, Louisiana Revised Statute § 14:95.1 (2014) is in stark contrast to Missouri Revised Statute § 571.070.1 (2008), which does not tailor the statute to only certain felony convictions which cause concern for future dangerousness. Nor does the Missouri statute tailor a time period for the felony conviction as there is under the Louisiana statute. Respondent would not fall under the purview of the Louisiana statute because his only prior felony was committed over ten years ago and that felony is not an enumerated prior felony in the statute. In Louisiana, Respondent would be able to possess a firearm to defend his person and property as he carried cash he received in payment for his employment. (L.F. 27)

As noted in Point I above, the studies, newspaper articles, and websites cited by Appellant in his argument that § 571.070.1 further a compelling state interest do not support the position that blanket prohibitions on felons possessing firearms are causally or closely connected to a reduction in future crime or an increase in public safety.

CONCLUSION

As Point I illustrates, Missouri Revised Statute § 571.070.1 is unconstitutional as applied to Respondent in the instant case because it is not narrowly tailored to serve the compelling government interest of crime prevention or the promotion of public safety as is required under Article I, § 23 of the Missouri Constitution (amended 2014). § 571.070.1 contains no exceptions, standards defining what is a violent felony and what is not, or temporal limitations in its ban on felons possessing firearms. This blanket prohibition on felons possessing firearms under § 571.070.1 runs contrary to the plain and ordinary language of amended Article I, § 23, which proclaims the right to bear arms a fundamental right subject to strict scrutiny, while still allowing for certain limitations on that right in order to keep firearms out of the hands of convicted violent felons and those adjudicated to be mentally ill. Respondent does not fall within either of these two narrowly tailored restrictions on a felon's right to bear arms as outlined above. Therefore, this Court should affirm the dismissal of Count I against Respondent.

Further, as Point II explains, Missouri's legislative restriction on the fundamental right to keep and bear arms is not a narrowly tailored measure that furthers a compelling state interest and as a result does not survive strict scrutiny analysis. As a result, the trial court's dismissal of Count I of the information against Respondent was proper as applied to Respondent in that § 571.070.1 violates Respondent's right to bear arms under the Second Amendment to the United States Constitution. Therefore, the dismissal of Count I against Respondent should be affirmed by this Court.

CERTIFICATE OF SERVICE AND COMPLIANCE

Pursuant to Missouri Supreme Court Rule 84.06, I hereby certify that on this 28th day of September, 2015, a true and correct copy of the foregoing brief was served via the Missouri case.net e-filing system to Aaron Levinson at levinsona@stlouiscao.org and Veronica Harwin at harwinv@stlouiscao.org, attorneys for Appellant.

Additionally, pursuant to Missouri Supreme Court Rule 84.06(c), I hereby certify that this brief includes the information required by Missouri Supreme Court Rule 55.03 at that it complies with the page limitations of Missouri Supreme Court Rule 84.06(b). This brief was prepared with Microsoft Word 2010 for Windows, is double spaced, and uses Times New Roman 13 point font.

The word-processing software identified that this brief contains 10,198 words, including the cover page, signature block, and certificates of service and compliance.

/s/ Patrick Kutz
Patrick Kutz
Missouri Bar No. 66023
Assistant Public Defender
1114 Market Street Suite 602
St. Louis, Missouri 63101
(314) 340-7625, ext. 256
patrick.kutz@mspd.mo.gov