

IN THE CIRCUIT COURT OF BOONE COUNTY, MISSOURI

STATE OF MISSOURI, ex rel.)	
Chris Koster, Attorney General,)	
)	
Plaintiff,)	
)	
v.)	Case Number: _____
)	
MICHAEL A. MIDDLETON, in his)	
official capacity as Interim President)	
of the University of Missouri, and)	
)	
THE CURATORS OF THE)	
UNIVERSITY OF MISSOURI,)	
)	
Defendants.)	

PLAINTIFF STATE OF MISSOURI'S PETITION FOR DECLARATORY AND INJUNCTIVE RELIEF

At the relation of Attorney General Chris Koster, the State of Missouri brings this action to vindicate the rights of University of Missouri Professor Royce Barondes and all other Missouri citizens to keep and bear arms as guaranteed in Article I, section 23 of the Missouri Constitution. In support of the State's petition to prohibit the President and Curators of the University of Missouri from infringing Professor Barondes' constitutional rights, the Attorney General alleges the following facts:

PARTIES AND JURISDICTION

1. Plaintiff State of Missouri (“State”) is a sovereign state established by the Missouri Constitution and is responsible for the enactment and enforcement of the Revised Statutes of Missouri.

2. Plaintiff’s Relator Chris Koster (“Attorney General”) is the duly elected Attorney General of the State of Missouri and a resident of Cole County, Missouri. § 27.010 RSMo.¹

3. By statute, the Attorney General “shall institute, in the name and on the behalf of the state, all civil suits and other proceedings at law or in equity requisite or necessary to protect the rights and interests of the state, and enforce any and all rights, interests or claims against any and all persons, firms or corporations in whatever court or jurisdiction such action may be necessary.” § 27.060 RSMo.

4. Royce Barondes (“Professor Barondes”) is employed by the State of Missouri as an Associate Professor at the University of Missouri-Columbia School of Law.²

¹ All statutory citations are to the Revised Missouri Statutes as updated through the 2015 Supplement.

² Professor Barondes has filed his own claims against the Curators in Cole County Circuit Court. *Barondes v. Middleton, et al.*, Case No. 15AC-CC00426. At the relation of Attorney General Koster, the State has moved to intervene as a plaintiff in that action as well, but the court has not ruled on the State’s motion and Curators are contesting venue in Cole County.

5. Defendant Michael A. Middleton (“Middleton”) is the Interim President of the University of Missouri and a resident of Boone County, Missouri.

6. Defendant Curators of the University of Missouri is the corporate name of the body politic governing the state university system, which has the power to sue and be sued. Mo. Const. Art. IX, sec. 9(a); §§ 172.010-.020 RSMo. Curators of the University of Missouri and Middleton are referred to collectively throughout this petition as “Curators.”

7. This Court has subject-matter jurisdiction pursuant to Article V, Sec. 14 of the Missouri Constitution and § 478.070 RSMo.

8. Venue is proper in Boone County under § 508.010.2(1) because no torts are alleged and Defendants reside in Boone County, Missouri.

MISSOURI’S FIREARMS STATUTES

9. Unless otherwise prohibited, a person may carry a firearm openly in the State of Missouri. *See* § 21.750.3(2) RSMo.

10. A person commits the crime of Unlawful Use of Weapons if he or she knowingly:

- a. “Carries *concealed* upon or about his or her person a ... firearm ...” § 571.030.1(1) RSMo (emphasis added);

- b. “Carries a firearm *into any building owned or occupied by ... state government*, or political subdivision thereof”
§ 571.030.1(8) RSMo (emphasis added); or
- c. “Carries a firearm ... into any *school....*” § 571.030.1(10)
RSMo (emphasis added).

11. The Unlawful Use of Weapons statute expressly exempts from the three restrictions cited above “any person who has a valid concealed-carry permit issued pursuant to sections 571.101 to 571.121.” § 571.030.4 RSMo.

12. A valid concealed-carry permit does *not* authorize a person to carry a concealed firearm into “[a]ny higher education institution ... without the consent of the governing body of the higher education institution....”
§ 571.107.1(10) RSMo (emphasis added).

13. However, “[p]ossession of a firearm *in a vehicle* on the premises of any higher education institution ... shall not be a criminal offense so long as the firearm is not removed from the vehicle or brandished while the vehicle is on the premises.” *Id.* (emphasis added).

14. Missouri law further provides that “any person who has ... a valid concealed carry permit, and who is lawfully carrying a firearm in a concealed manner, may briefly and openly display the firearm to the ordinary sight of another person, unless the firearm is intentionally displayed in an angry or threatening manner.” § 571.037 RSMo.

15. Notwithstanding the consent requirement in § 571.107.1(10) RSMo, neither the State of Missouri nor its political subdivisions may “prohibit any state employee from having a firearm in the employee’s vehicle on the state’s property provided that the vehicle is locked and the firearm is not visible.” §571.030.6 RSMo.

16. The statutory provision allowing a state employee to keep firearms in his or her vehicle applies only “when the state employee’s vehicle is on property owned or leased by the state and the state employee is conducting activities within the scope of his or her employment.” *Id.*

CURATORS’ FIREARMS REGULATIONS

17. As the governing body for the University of Missouri, Curators do not consent to allow concealed-carry permit holders to carry concealed weapons on University property.

18. On the contrary, the Curators’ regulations prohibit “[t]he possession ... of firearms ... on University property ... except in regularly approved programs or by University agents or employees in the line of duty.” University of Missouri System Regulations § 110.010.B.4(a). A copy of University Regulation § 110.010.B.4(a) is attached to this petition as Exhibit A.

19. With limited exceptions for campus police and “regularly approved programs,” the Curators’ regulations impose a blanket restriction

on carrying firearms on University property—whether concealed or openly displayed—regardless of a concealed-carry permit holder’s individual circumstances. *Id.*

20. The Curators’ regulations provide no procedure for University employees with valid concealed-carry permits to petition Curators for consent to carry their concealed firearms on University property on a case-by-case basis.

FIREARMS PROVISIONS IN THE MISSOURI CONSTITUTION

21. On August 5, 2014, Missouri voters amended the state constitution to guarantee:

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, or when lawfully summoned in aid of the civil power, shall not be questioned. The rights guaranteed by this section shall be unalienable.

Mo. Const. art. I, § 23.

22. The Missouri Constitution further provides that “[a]ny restriction on these rights shall be subject to strict scrutiny.” *Id.*

PROFESSOR BARONDES’ CONSTITUTIONAL RIGHTS

23. Professor Barondes holds a valid concealed-carry permit.

24. On information and belief, other employees of the University of Missouri hold valid concealed-carry permits.

25. Professor Barondes carries a concealed weapon in his vehicle while not on University property.

26. On information and belief, other employees of the University of Missouri carry concealed weapons in their vehicles while not on University property.

27. Professor Barondes would carry a concealed weapon in his vehicle while on University property but for the threat of sanctions for violating Curators' Regulation § 110.010.B.4(a).

28. On information and belief, other employees of the University of Missouri would carry concealed weapons in their vehicles while on University property but for the threat of sanctions for violating Curators' Regulation § 110.010.B.4(a).

COUNT I
Statutory Preemption

29. The State incorporates paragraphs 1-28 into Count I.

30. Curators' regulations that conflict with state law are unenforceable: "If a local law either prohibits what state law allows, or allows what state law prohibits, then a local law is in conflict with the state law and,

therefore, preempted.” *Babb v. Missouri Pub. Serv. Comm'n*, 414 S.W.3d 64, 70 (Mo. App. W.D. 2013).

31. Curators’ Regulation § 110.010.B.4(a) conflicts with § 571.030.6 RSMo, and is therefore preempted, to the extent it purports to prohibit Professor Barondes and other University employees who hold valid concealed-carry permits from keeping firearms locked in their vehicles while parked on University property.

32. Curators’ Regulation § 110.010.B.4(a) conflicts with § 571.107.1(10) RSMo, and is therefore preempted, to the extent the regulation purports to prohibit Professor Barondes and other University employees who hold valid concealed-carry permits from carrying concealed firearms on their person while driving their vehicles on University property. *Id.*

33. Curators’ Regulation § 110.010.B.4(a) conflicts with § 571.037 RSMo, and is therefore preempted, to the extent it purports to prohibit Professor Barondes and other University employees who hold valid concealed-carry permits from transferring firearms in a calm and nonthreatening manner between the passenger compartment and the locked trunk of their vehicles while parked on University property.

34. A justiciable controversy exists in this case because Curators' Regulation § 110.010.B.4(a) purports to prohibit conduct expressly protected by Missouri statute.

35. Plaintiff State of Missouri has no adequate remedy at law.

WHEREFORE, the State respectfully asks this Court to enter judgment in Plaintiff's favor and against Curators:

1. Declaring that Curators' Regulation § 110.010.B.4(a) conflicts with §§ 571.030.6, 571.037, and 571.107.1(10) RSMo and is therefore preempted and unenforceable to the extent it purports to prohibit Professor Barondes and other University employees *who hold valid concealed-carry permits* from:

- a. carrying concealed firearms while driving their vehicles on University property and conducting activities within the scope of their employment;
- b. keeping firearms secured out of sight in their locked vehicles parked on University property while conducting activities within the scope of their employment; and
- c. briefly transferring firearms in a calm and nonthreatening manner between the passenger compartment and the locked trunk of their vehicles parked on University

property while conducting activities within the scope of their employment; and

2. Permanently enjoining Curators from enforcing Curators' Regulation § 110.010.B.4(a) to the extent it purports to prohibit Professor Barondes and other University employees *who hold valid concealed-carry permits* from:

- a. carrying concealed firearms while driving their vehicles on University property and conducting activities within the scope of their employment;
- b. keeping firearms secured out of sight in their locked vehicles parked on University property while conducting activities within the scope of their employment; and
- c. briefly transferring firearms in a calm and nonthreatening manner between the passenger compartment and the locked trunk of their vehicles parked on University property while conducting activities within the scope of their employment.

COUNT II
As-Applied Constitutional Challenge

36. The State incorporates paragraphs 1-35 into Count II.

37. Under Article I, sec. 23 of the Missouri Constitution, restrictions on the right the keep and bear arms are subject to “strict scrutiny.” *State v. Merritt*, 467 S.W.3d 808, 812 (Mo. 2015).

38. “Considered the ‘most rigorous and exacting standard of constitutional review,’ strict scrutiny is generally satisfied only if the law at issue is ‘narrowly tailored to achieve a compelling interest.’” *Dotson v. Kander*, 464 S.W.3d 190, 197 (Mo. 2015)(quoting *Miller v. Johnson*, 515 U.S. 900, 920 (1995)).

39. The State has a compelling interest in ensuring public safety and reducing firearm-related crime. *Merritt*, 467 S.W.3d at 814.

40. Curators’ Regulation § 110.010.B.4(a) is not narrowly tailored to achieve the Curators’ compelling interest, however, because it provides no avenue for law-abiding employees with valid concealed-carry permits to request that Curators consider the particular circumstances surrounding the employees’ desire to carry a concealed weapon on University property while conducting activities within the scope of their employment.

41. For a statute to be narrowly tailored, “it must not burden substantially more” constitutional rights than necessary to further the government’s interest. *Phelps-Roper v. Nixon*, 509 F.3d 480, 487 (8th Cir. 2007), *modified on reh’g*, 545 F.3d 685 (8th Cir. 2008) (discussing “narrow tailoring” in free-speech context).

42. Curators' Regulation § 110.010.B.4(a) burdens substantially more Article I, sec. 23 rights than necessary to ensure public safety and reduce firearm-related crime on University property because it prohibits all law-abiding University employees with valid concealed-carry permits from carrying concealed firearms on University property while conducting activities within the scope of their employment regardless of the employees' individual circumstances or safety concerns.

43. For example, a University employee who obtains a concealed-carry permit and an order of protection after receiving a direct threat of violence from her ex-husband has no recourse for seeking the Curators' consent for her to carry a concealed firearm while at work.

44. A blanket restriction on employees' rights to keep and bear arms for self-defense while on University property is not narrowly tailored unless individual employees with valid concealed-carry permits are afforded some means of petitioning the Curators for consent to carry concealed firearms while conducting activities within the scope of their employment based on a case-by-case analysis of the employees' specific safety concerns.

45. Because Curators' Regulation § 110.010.B.4(a) provides no such procedure for analyzing the safety needs of individual employees with valid concealed-carry permits, the regulation cannot survive strict scrutiny in its current form.

46. A justiciable controversy exists in this case because Curators' Regulation § 110.010.B.4(a) purports to prohibit conduct protected by the Missouri Constitution.

47. Plaintiff State of Missouri has no adequate remedy at law.

WHEREFORE, the State respectfully asks this Court to enter judgment in Plaintiff's favor and against Curators:

1. Declaring that Curators' Regulation § 110.010.B.4(a) as currently drafted violates Article I, sec. 23 of the Missouri Constitution to the extent that it fails:

- a. to consider the particularized safety concerns of individual, law-abiding employees with valid concealed-carry permits, and
- b. to make case-by-case determinations whether consent should be granted to such employees to carry concealed firearms on University property while conducting activities within the scope of their employment; and

2. Instructing Curators to establish within 90 days of the entry of judgment appropriate procedures:

- a. to consider the particularized safety concerns of individual, law-abiding employees with valid concealed-carry permits, and

- b. to make case-by-case determinations whether consent should be granted to such employees to carry concealed firearms on University property while conducting activities within the scope of their employment.

Respectfully submitted,

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