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Honorable Dean Plocher
Speaker of the House
201 West Capitol Avenue, Room 308
Jefferson City, MO 65101

RE: Senate Bill 727

Dear Mr. Speaker:

We have been asked for a legal opinion on the effect of Senate Bill 727, as perfected by the Missouri Senate, on Missourians' rights to keep and bear arms. Specifically, whether the proposed new language in Section 167.012 defining "home school" would impact Missourians' rights to keep and bear arms in their own homes, which are being used as a home school.

It is our opinion that the new language will not restrict or impede Missourians' right to keep and bear arms in their homes, even if those homes are being used as a home school.

Section 167.012 in Perfected Senate Bill 727

This new section adds a new definition of "home school" which reads as follows:

> 1. For purposes of state law, a "home school" is a school, whether incorporated or unincorporated, that:
>
> (1) Has as its primary purpose the provision of private or religious-based instruction;
>
> (2) Enrolls children between the ages of seven years and the compulsory attendance age for the school district in which the home school is located, of which no more than four are unrelated by affinity or consanguinity in the third degree;
>
> (3) Does not charge or receive consideration in the form of tuition, fees, or other remuneration in a genuine and fair exchange for provision of instruction;

(4) Does not enroll children who participate in the program established in sections 135.712 to 135.719 and sections 166.700 to 166.720; and

(5) Is not an FPE school.

Effect on Missourians' Right to Keep and Bear Arms

Some opponents of the bill now claim that this definition affects Missourians' right to keep and bear arms. The argument is as follows:

1) The new language now applies the definition of "home school" to all state laws.
2) Section 571.030.1(10), RSMo, prohibits bringing a firearm into a school.
3) Section 167.012.1 in Senate Bill 727 would result in a ban on firearms in home schools.

This claim is flawed and unfounded as explained below.

Analysis

An analysis of the criminal provisions found in Section 571.030.1(10), RSMo, is dispositive to this inquiry. The General Assembly (and more broadly the state as a whole) is prohibited from restricting s' right to keep and bear arms in their home.

Additionally, the reading advanced by opponents of the bill would lead to an absurd result. In Missouri, legislative changes cannot be read to lead to absurd results. *See State ex rel. T.J. v. Cundiff*, 632 S.W.3d 353, 358 (Mo. banc 2021). In addition, federal law, which is the underlying basis of the prohibition on firearms in schools, rebuts the position of the bills' opponents.

State Constitutional Protection of the Right to Keep and Bear Arms Prevails over Implied Restriction

Article I, Section 23 of the Missouri Constitution states as follows:

> 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. Any restriction on these rights shall be subject to strict scrutiny and the state of Missouri shall be obligated to uphold these rights and shall under no circumstances decline to protect against their infringement. 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. Const., art. I, §23. The General Assembly has no authority to infringe on a Missourian's right to keep and bear arms in their home. The last sentence of this provision reflects the very limited exception to this restriction (relating to violent felons or persons adjudicated to be a danger to themselves or others).

Any action taken by the General Assembly to restrict such right will be reviewed under the standard of strict scrutiny pursuant Article I, Section 23. *See State ex rel Schmitt v. Choi*, 627 S.W.3d 1, 14-15 (Mo. App. W.D. 2021). Under this standard, the restriction on the right must be expressly intended by the government (here the General Assembly). *Id.*

"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." *Id.* at 14 quoting *State v. McCoy*, 468 S.W.3d 892, 897 (Mo. banc 2015). "Context matters ... strict scrutiny is designed to provide a framework for carefully examining the importance and the sincerity of the reasons advanced by the governmental decision maker[.]" *Id.* quoting *State v. Clay*, 481 S.W.3d 531, 535 (Mo. banc 2016).

There is no indication that the General Assembly expressly intends to extend the provisions of Section 571.030.1(10) to home schools. So instead, opponents argue that the legislative change to define a "home school" impliedly amends the provisions of a criminal statute to effectively abrogate a constitutional right to keep and bear arms. Effectively they are arguing that the language is ambiguous and that a court would find that ambiguity sufficient to restrict the rights under Article I, Section 23. That argument has no support in Missouri law.

Even under a broad reading of the *Schmitt* case, there is no grounds for an implied restriction of a constitutional right. In Schmitt, the University's regulation banning possession of firearms on campus was upheld. *Id.* The Court found that the express nature of the prohibition showed the intent of the University and that there was evidence supporting the regulation as a narrowly tailored restriction. *Id.* at 17.

The Court also held that such a regulation was a reflection of the long history and substantial consensus that firearms were not allowed on the University campus. *Id.* This finding supports the rejection of the opponents' arguments as Section 571.030 has never been applied to home schools, even though home schooling has existed in Missouri for years. The term "home

school" is not only found in Chapter 167, but also is found in a number of other chapters, such as Chapters 161, 162, 166, 210, and 452, RSMo. Still, no court has ever extended every use of the word "school" to include a home school.

Additionally, since Section 571.030.1(10), RSMo, is a criminal statute it also is construed against the state. *See State v. Salazar*, 236 S.W.3d 644, 646 (Mo. banc 2007) (citing *State v. Hobokin*, 768 S.W.2d 76, 77 (Mo. banc 1989)).

Effectively a local prosecuting attorney would have to charge a person with a crime and then get a court to read the term "school" so broadly as to include a home school. Courts are not going to take this leap on a constitutionally protected right without express intent by the General Assembly (e.g., via either referring directly to Chapter 571 in the definition of a home school or including "home school" directly in the criminal prohibition on firearms).

With express intent, it is our opinion that the constitution would prevail. Here, where there is no express intent at all, the opponents' argument must fail.

Senate Bill 727 will not be Construed to Lead to An Absurd Result

The inherent aspect of the critique is that the addition of the words "for purposes of state law" means that anywhere the word "school" is present it must include a home school. This is an absurd reading of the amendment.

Statutes are interpreted to avoid unreasonable or absurd results. *See, e.g.*, *State ex rel. T.J. v. Cundiff*, 632 S.W.3d 353, 358 (Mo. banc 2021) and *State v. Nash*, 339 S.W.3d 500, 508 (Mo. banc 2011).

The undefined term "school" appears in more than 1,500 statutes in Missouri. To read that term to include "home school" in each of those statutes would lead to absurd result. Even winnowing these statutes down to the number in which the word "school" stands alone would result in the application to hundreds of statutes.

Federal Law Controls "School Zone" Gun Provisions

First, the federal gun-free zone act specifically defines school zones in a way that excludes home schools. *See* 18 U.S.C. 921(a)(26) (defining "school zone" to mean "in, or on the grounds of, a public, parochial, or private school," none of which describe home schools). So, even though

the statute looks to state law to define what "school" means (18 U.S.C. 921(a)(27)), federal law limits the gun-free zone act to "public, parochial, or private" schools, none of which plausibly include home schools.

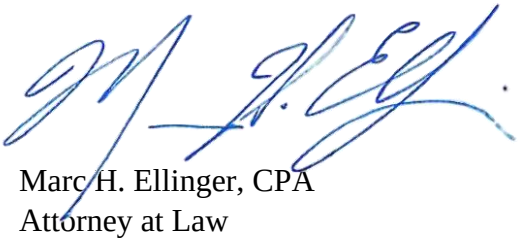
Second, even assuming that this definitional amendment to Missouri state law could somehow upend federal law (which it cannot), the gun-free zone law contains exceptions that would render it inapplicable in this context. *See* 18 U.S.C. 922(q)(2)(B)(iv) (carving out an exception for firearm possession "by an individual for use in a program approved by a school in the school zone"). Presumably, these gun owners would condone their own firearm possession in their own home schools, which would fall within this exception (again, assuming that the federal prohibition applies to them in the first place, which it would not).

The sorts of federal regulations that opponents of his bill are concerned about—the ADA, gun control, tax-free regulations—are governed by federal law, which explicitly limits their scope to public, parochial, and private schools. Though federal law sometimes incorporates state law to define what a "school" is (*see e.g.*, 18 U.S.C. 921(a)(27)), federal law typically classifies kinds of schools as a matter of federal not state law. After all, Congress wouldn't want to craft a regulatory scheme only to allow states to effectively exempt their constituents by tweaking a single definition.

Conclusion

It is our opinion that the proposed language in Section 167.012.1 of Senate Bill 727 will not result in the application of the ban on firearms in schools to home schools. To read the language otherwise would be to violate the express terms of Article I, Section 23 of the Missouri Constitution, would lead to an absurd result, and would be contrary to existing jurisprudence and federal law.

Sincerely,



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