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April 11, 2024

Re: MO SB 727—Reason for concern?

Dear

Thank you for allowing me to review the letter from Jared Schneider, Esq., regarding this bill. In his letter, he asks the Missouri General Assembly to amend SB 727 to revert back to the current idea that the definition of “home school” should be preceded by “as used in sections 167.031 to 167.071.” His primary concern is that it could inadvertently impinge on the right of Missourians to keep guns in their homes.

This will be a lengthy response, so I will break it down into sections.

This does not constitute legal advice to you or anyone else.

Gun Rights Advocates Can Advocate For Their Own Interests

HSLDA does not advocate for gun rights. There are organizations that do that. If they believe this bill is a threat, they should jump in and seek an amendment to the bill. I know of no such group that is seeking to amend the bill.

I know of one, the Missouri Firearms Coalition, that has issued a public statement saying the bill “might be alarming homeschooling parents who own firearms,” but “we do not believe that concern is merited.”

The lack of opposition from guns rights groups to SB 727 speaks volumes to me.

Mr Schneider’s Federal Gun Law Concern

Mr Schneider is concerned that the bill could put Missouri homeschool families in violation of federal law, 18 U.S.C. 922. I do not share his concern.



That law, broadly speaking, prohibits guns in a “school zone.” The phrase “school zone” is defined as “...the grounds of a ...private school.” Missouri law is very clear that there are only four types of schools: public, private, parochial and home. Each of those is different. A home school is not a private school. It is its own category.

Since the federal law makes it a crime to have a gun on or near a “private school,” and since a home school is not a private school under Missouri law, I have no concern about it applying to a home school family.

Having said that, a home school is *already* a “school” under state law. Numerous code sections outside sections 167.031 to 167.071 already incorporate the idea that a home school is a “school.” These include sections 162.996, 210.167, 167.600, 167.619, 166.700, 452.375, 210.211, and 161.670.

The introductory phrase in current law, “as used in sections...,” would emphatically not prevent a court from applying the current definition in any context in connection with any statute in the Missouri Code where a definition of “home school” might be needed.

Since a home school is *already* a “school” under state law, if Missouri homeschoolers could be subject to the federal law, I am confident it would have happened already. But it hasn’t, and the likelihood of that happening is vanishingly small, in my view.

It is a strength of our freedom that a home school is truly a school. Over the 25 years I have represented Missouri home school families for HSLDA, I have won many battles with various officials by starting with the fact that a home school is truly a school.

It is no reason for concern that the bill would extend our current definition of “home school” so as to explicitly apply in all code contexts where a definition of “home school” is needed.

Constitutional Conflicts Must Be Avoided

A rule of statutory interpretation says that if a statute can be interpreted two ways, one of which would result in a violation of the constitution and the other not doing that, the interpretation that does *not* result in a constitutional violation must be used. Missouri has a very strong Constitutional provision protecting the right to keep and bear arms. Article I section 23 of Missouri’s Constitution says:

“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.”

If someone were to argue that the language in SB 727 should be interpreted to make it a crime for a homeschool family to have a gun in their house, this rule of statutory interpretation would

swoop in and say, “Nope, we are not going to interpret it that way because it would result in a violation of Article I, Section 23.”

Missouri Prohibition Against Guns in “School”

When RSMo 571.030.1(10) makes it a crime to carry a firearm “into any school,” it clearly means a school that operates in a *school building*. If there is no school building, one can’t carry a firearm into it. Since there is no building connected by law to a home school, there is no “home school building” into which one could carry a firearm.

A school can exist without a school building. That’s how Missouri home schools operate. They operate in homes, not school buildings. A home school could continue to function even with no building at all (and I have seen several actual examples of this).

Missouri Prohibition Against Carrying Guns Onto Premises

That same statute goes on to prohibit carrying a firearm “onto the premises of any function or activity sponsored or sanctioned by school officials....” The context is quite clear that this is intended to apply to an institutional-type school and is not intended to apply to the functions and activities of a family unit.

For example, Missouri law does not designate any “school official” for a home school. In some states—Pennsylvania and Kansas for example—state law mandates that a home school have a specific home school official, and that official is identified as such in law. But there is none for Missouri.

A home school is not an institutional school, and it is run by parents, not “officials.” I see no grounds for concern in this regard.

The Legislature’s Intention

When interpreting a law, courts always ask: “What did the legislature intend to accomplish?” Considering the huge amount of work that has gone into all the various drafts of SB 727, and the volumes of discussion and debate about it, there is no hint whatsoever that the legislature is intending to make it illegal for a home school family to keep a firearm in their home. I have no concern that a court would rule otherwise.

Criminal Statutes Must Be Interpreted Strictly Against the State

Courts agree that criminal statutes like RSMo 571.030 must be construed strictly (i.e., so as to criminalize the least possible activity) against the State and liberally in favor of the person who has been accused. No one can be guilty of a crime based only on an implication in a law.

The argument that SB 727 (by making a home school “a school” throughout the entire code) would make the criminal penalties of RSMo 571.030 apply to home schoolers with guns in their homes is supported, at best, only by a long, thin string of assumptions and implications.

Construing RSMo 571.030 strictly against the state, and liberally toward someone accused, as required by our jurisprudence, conclusively nails the issue, in my view.

Proposed Amendment

Mr. Schneider's proposed amendment, if done in isolation, would cause unintended damage. The entire fabric of SB 727 is predicated on it no longer being necessary to refer back to the section of code containing the definition of "home school."

But if all the collateral issues were addressed—i.e., every time "home school" is mentioned in the bill, that language be added to include a reference to the definition's location in the code—the result would be inconsequential. It would do no harm and do no good, in my view.

Creating a New Home School Option

Though not mentioned in Mr. Schneider's letters, others have expressed concerns over SB 727 creating a new home school option to be called "family paced education school." Since the beginning, Missouri law has provided for only one home school option: "home school."

Other states have multiple options. ME, AL, MI, CA, CO, FL, LA, MD, PA, SC and OH have two. DE, VA, TN, and WV have three. Alaska has four. Iowa has five.

In general, I view it as a strength to have multiple lawful options for homeschooling. I have no reason to be concerned about Missouri expanding from one option to two.

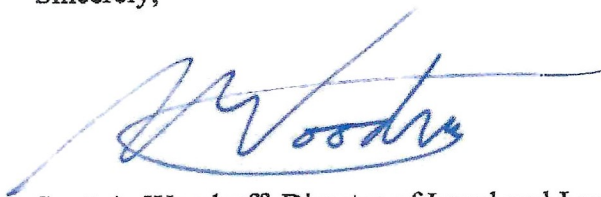
Closing

I welcome any additional questions. I am happy to address them all. I welcome the opportunity to re-read the bill with different concerns in mind.

While I live and work in Virginia now, my first law job was working in Jefferson City for John Ashcroft as an Assistant Attorney General. My wife (whom I met in Ashcroft's office) and I homeschooled three children in Missouri for many years.

What happens in Missouri is not just a professional issue for me. It's personal.

Sincerely,



Scott A. Woodruff, Director of Legal and Legislative Advocacy