

# Not Only in My Backyard but on My Front Stoop: The Forgotten Opinion of Urbanites About Concealed-Carry in Missouri

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## INTRODUCTION

The United States is a nation divided along population lines. Every year, the interests and concerns of urban populations grow farther from those of their rural counterparts. This chasm is especially evident in recent election results.<sup>1</sup> Politicians win or lose based on their ability to appeal to either rural or urban voters,<sup>2</sup> as demonstrated by the last two presidential elections. During the 2000 and 2004 elections, the Electoral College process balanced urban Democratic voters in New York and California against predominantly rural voters in Mississippi, Montana and West Virginia.<sup>3</sup> Gun control was one

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1. CNN exit polling after the 2004 presidential election showed that a large majority of rural voters voted for President George W. Bush, while most urban voters voted for Senator John Kerry. The suburban vote was closer, but also favored President Bush. *See* CNN.com, Election 2004, <http://www.cnn.com/ELECTION/2004/pages/results/states/US/P/00/epolls.0.html> (last visited May 16, 2006).

2. *See id.*

3. *See* Population of Mississippi, [http://www.classbrain.com/artstate/publish/article\\_1245.shtml](http://www.classbrain.com/artstate/publish/article_1245.shtml) (last visited May 16, 2006) (reporting that the 2000 census noted Mississippi's population to be 1,388,560 urban and 1,456,098 rural); Population of West Virginia, [http://www.classbrain.com/artstate/publish/article\\_1272.shtml](http://www.classbrain.com/artstate/publish/article_1272.shtml) (last visited May 16, 2006) (reporting that West Virginia's 2000 population was 832,780 urban and 975,564 rural); Population of Montana, [http://www.classbrain.com/artstate/publish/article\\_1247.shtml](http://www.classbrain.com/artstate/publish/article_1247.shtml) (last visited May 16, 2006) (reporting that Montana's population in 2000 was 487,465 urban and 414,730 rural). All of these states voted for George W. Bush in 2000. *See* Presidential Election 2000, <http://nationalatlas.gov/printable/images/pdf/elections/elect14.pdf> (last visited May 16, 2006).

key issue on which urban and rural voters sharply disagreed.<sup>4</sup> However, the political process is not the only thing affected by the ever-increasing rift in our society; the laws by which we live also reflect this split.<sup>5</sup> While debate over other laws can be contentious, nowhere is the rift between urban and rural populations more heated than in debates over gun control legislation.<sup>6</sup>

Missouri is a prime example of a state divided along population density lines regarding gun legislation.<sup>7</sup> On September 11, 2003,

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4. See Dan M. Kahan & Donald Braman, *More Statistics, Less Persuasion: A Cultural Theory of Gun-Risk Perceptions*, 151 U. PA. L. REV. 1291, 1293 (2003) (“[I]n the 2000 election, their respective support for and opposition to gun control may well have cost Democrats the White House and Republicans control of the U.S. Senate.”); Jonathon Cowan & Jim Kessler, *Changing the Gun Debate*, BLUEPRINT MAG., July/Aug. 2001, at 30–33 (stating that “[i]n November 2000 voters from gun-owning households made up roughly half of the electorate and two-thirds of them voted for George W. Bush,” and that “[f]ive of seven NRA-backed candidates for the Senate lost”). CNN exit polling after the 2004 election showed that a strong majority of gun owners once again favored President George W. Bush, see Election 2004, *supra* note 1, despite John Kerry’s attempt to paint himself as a sportsman during a hunting trip to the swing state of Ohio.

5. Urban and rural populations have taken opposing sides on many debates in the United States. See Dan M. Kahan, *The Secret Ambition of Deterrence*, 113 HARV. L. REV. 413, 439–40 (1999) (“All else equal, support for the death penalty is more prevalent among . . . country dwellers than city dwellers . . . .” (citing Dennis R. Longmire, *Americans’ Attitudes About the Ultimate Weapon: Capital Punishment*, in AMERICANS VIEW CRIME AND JUSTICE: A NATIONAL PUBLIC OPINION SURVEY 93, 99 (Timothy J. Flanagan & Dennis R. Longmire eds., 1996))). The recent presidential election has made the differences between rural and urban populations even clearer. Many of the “moral laws” that commentators have cited as one of the keys to President Bush’s re-election, including anti-gay marriage and anti-gaming laws, are far more popular in rural areas than in urban areas. See Election 2004, *supra* note 1.

6. See, e.g., Kahan & Braman, *supra* note 4, at 1318–19.

Control partisans ridicule their adversaries as “hicksville cowboys,” members of the “big belt buckle crowd” whose love of guns stems from their “macho, Freudian hang-ups,” while NRA President Charlton Heston declares “cultural war” against “blue-blooded elitists” who threaten an “America . . . where you [can] . . . be white without feeling guilty, [and] own a gun without shame.”

*Id.* (citations omitted).

7. See *A Vote for Sanity*, ST. LOUIS POST-DISPATCH, Apr. 7, 1999, at B10; E.J. Dionne, *Faith in System Won*, ST. LOUIS POST-DISPATCH, Apr. 19, 1999, at D17; *Missouri Backers of Concealed Weapons Ignore the Public*, KAN. CITY STAR, Feb. 5, 2002, at B6. Missouri also acts as a good barometer for the rest of the nation concerning issues broader than gun legislation. R.W. Apple, Jr., *With Bush Advancing, Missouri May Be a Battleground All but Conquered*, N.Y. TIMES, Sept. 30, 2004, at A21 (“Neither wholly Southern nor wholly Northern, fully Eastern nor fully Western, [Missouri] is America writ small. Most of its demographic characteristics—its residents’ age, marital status, income and educational levels—mirror the nation’s.”).

siding with rural interests, a super-majority of the Missouri General Assembly overrode a gubernatorial veto to become the forty-fifth state to adopt legislation permitting the carrying of concealed weapons.<sup>8</sup> Six months later, in *Brooks v. State*,<sup>9</sup> the Missouri Supreme Court ignored the outcry in Missouri's two largest population centers, St. Louis and Kansas City,<sup>10</sup> by holding the concealed-carry law constitutional.<sup>11</sup>

This Note attempts to shed light on an area of the gun-control debate that is often ignored: the divergent interests of rural and urban populations regarding gun legislation.<sup>12</sup> Part I focuses on the history of concealed-carry in Missouri. Part II identifies some of the differing interests of urban and rural populations concerning gun control in general, and concealed-carry laws in particular. Part III briefly explains possible reasons that Missouri abandoned its urban populations and the potential costs and benefits of doing so. Part IV explores solutions to the concealed-carry problem in urban centers.

## I. THE HISTORY OF CONCEALED-CARRY IN MISSOURI

By September 11, 2003, most states had adopted some form of legislation allowing permit holders to carry concealed weapons.<sup>13</sup> Missouri was an exception.<sup>14</sup> Prior to this date, it was a crime in

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8. COMM. ON CRIME PREVENTION & PUB. SAFETY, SUMMARY OF THE COMMITTEE VERSION OF THE BILL, HB 349, 120, 136 & 328, 92d General Assembly, 2d Ex. Sess. (2003), available at <http://www.house.state.mo.us/bills03/sumpdf/HB0349c.pdf>.

9. 128 S.W.3d 844 (Mo. 2004).

10. Many editorials condemning the new concealed-carry law were written for the two largest newspapers in the state, the *St. Louis Post-Dispatch* and the *Kansas City Star*. See *supra* note 7.

11. *Brooks*, 128 S.W.3d at 851.

12. The goal of this Note is quite similar to Kahan and Braman's goal of influencing policy makers to fashion "policies expressively rich enough to enable all parties to find their cultural visions affirmed by the law." Kahan & Braman, *supra* note 4, at 1322. The first step of such a project is "to clarify, to the greatest extent possible, the nature of the conflicting cultural views at stake in the gun control debate." *Id.* at 1323. While it may seem overly simplistic to characterize cultures as either rural or urban, the dichotomy provides a useful starting point.

13. COMM. ON CRIME PREVENTION & PUB. SAFETY, *supra* note 8, at 4 ("Supporters say that Missouri is one of just six states that do not allow citizens to acquire a permit to carry a concealed firearm.").

14. *Id.*

Missouri for an individual to carry a concealed weapon unless he or she was a police officer or fit into another limited exception.<sup>15</sup>

In 1999, a majority of Missouri voters, led by a higher-than-expected turn out in urban counties, rejected Proposition B—a referendum calling for a concealed-carry law similar to the one eventually adopted.<sup>16</sup> While urban and suburban voters soundly defeated Proposition B, rural voters overwhelmingly approved it.<sup>17</sup> Although it appeared by this vote that a majority of Missouri citizens wanted the carrying of a concealed weapon to remain a crime for private citizens, the Missouri General Assembly thought otherwise.

With rural voters in mind, a supermajority of the Missouri General Assembly overrode a veto by Governor Bob Holden and repealed the existing law banning concealed weapons on September 11, 2003.<sup>18</sup> The General Assembly replaced the old law with new provisions allowing the carrying of concealed weapons by those with a permit.<sup>19</sup> Missouri's new concealed-carry permit policy is that the state shall

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15. MO. REV. STAT. §§ 571.030.1–2 (2000) (extending the exception to the prohibition against carrying concealed weapons not only to peace officers, but also to members of the armed forces and national guard while performing their official duties, federal probation officers, state probation or parole officers, wardens, etc.).

16. See *A Vote for Sanity*, *supra* note 7; Dionne, *supra* note 7.

17. See *A Vote for Sanity*, *supra* note 7 (“In rural areas, where the referendum was viewed as a basic test of gun rights, it passed handily. In urban areas, where gun violence is more prevalent, voters rejected the measure by a large margin—30,000 votes in St. Louis and more than 100,000 in the county.”); Karen E. Culp, *Bill to Carry Concealed Guns Stalls in Senate*, NEWS-LEADER (Springfield, Mo.), May 15, 2002, at 5 (“In [rural] Greene County in 1999, Proposition B received 23,647 yes votes and 20,962 no votes. In St. Louis, the vote was 16,945 yes and 48,474 no, according to the 1999–2000 Missouri State Manual.”).

18. The Missouri General Assembly is structured much like Congress. A House of Representatives and a Senate combine to form the General Assembly. In 2003, the Missouri Senate was composed of thirty-four members who each represented a district of approximately 164,000 people. Missouri State Senate, <http://www.senate.state.mo.us/04info/facts.htm> (last visited May 16, 2006). The geographic size of senatorial districts ranged from a “few square miles in some urban areas to 16 counties in some rural areas.” *Id.* The Missouri House of Representatives contained 163 members. Missouri House of Representatives, Frequently Asked Questions, <http://www.house.state.mo.us/default.aspx?info=/info/memfaq.htm> (last visited May 16, 2006). If the governor vetoes a bill, as Governor Holden did to the bill that eventually became Concealed-Carry, a two-thirds vote by members of both houses is required to override the veto. Missouri State Senate, How a Bill Becomes a Law, <http://www.senate.state.mo.us/04info/bill-law.htm> (last visited May 16, 2006). In 2003, this meant that at least 132 members of the General Assembly voted to override Governor Holden's veto to pass Concealed-Carry into law.

19. Lynn M. Ewing III, *Concealed Carry: The Law of Unintended Consequences? or Right or Wrong, It's Still Swiss Cheese*, 60 J. MO. B. 136, 136 (2004).

issue permits to any qualified individual.<sup>20</sup> The Committee on Crime Prevention and Public Safety explicitly cited the interests of individuals living in rural areas as a reason for the law's enactment.<sup>21</sup>

This legislative action allows any person holding a concealed-carry permit issued by Missouri or another state to carry a concealed weapon into a polling place, a church, or a school without facing criminal prosecution.<sup>22</sup> Instead, a permit holder that violates the law by bringing a firearm into a restricted location can expect, at worst, a fine and the loss of his or her permit, but only after three such infractions in one year.<sup>23</sup> However, the issuance of a fine or citation for a first offense is at the discretion of the peace officer called to the

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20. MO. REV. STAT. § 571.101.1 (2004) ("If the said applicant can show qualification as provided by sections 571.101 to 571.121, the county or city sheriff shall issue a certificate of qualification for a concealed carry endorsement."). Commentators have identified four types of concealed weapons legislation: "unregulated, permissive/shall issue, discretionary, and prohibited." Lara L. Overton, *Permit to Carry Legislation: Has the Time Come for Change in Minnesota's Firearm Legislation and Policy?*, 21 *HAMLIN J. PUB. L. & POL'Y* 95, 104 (1999). "Unregulated" allows for the possession of a concealed weapon without requiring a permit. *Id.* "Permissive or shall issue" legislation obligates the state to issue a permit to carry a concealed weapon, provided that the applicant for the permit meets the state's statutory requirements of competency, usually including a criminal background check, inquiry into mental problems or drug use, gun training and other factors. *Id.* at 105. Whereas permissive legislation requires the state to issue a permit after the applicant has satisfied the statutory requirements, discretionary legislation allows law enforcement officials or judges the discretion to grant a qualified applicant a permit based on his or her ability to prove a "compelling need" for the permit. *Id.* at 105-06. Prohibitive legislation allows only police and the military to legally carry concealed weapons; no private citizen may carry a concealed weapon in a state with prohibitive legislation. *Id.* at 106.

21. COMM. ON CRIME PREVENTION & PUB. SAFETY, *supra* note 8, at 4 ("People who live in rural areas can't rely upon law enforcement to protect them all the time, because there are too few deputies covering a large geographical area. . . . When methamphetamine dealers set up labs in the woods nearby, and the closest sheriff's deputy is a half hour away, a person needs to be able to protect himself.").

22. MO. REV. STAT. § 571.107.2 (2004) states:

Carrying of a concealed firearm in [locations such as churches and polling places] by any individual who holds a concealed carry endorsement . . . shall not be a criminal act but may subject the person to denial to the premises or removal from the premises. If such person refuses to leave the premises and a peace officer is summoned, such person may be issued a citation for an amount not to exceed one hundred dollars for the first offense . . . . If a third citation for a similar violation is issued within one year of the first citation, such person shall be fined an amount not to exceed five hundred dollars and shall have his or her concealed carry endorsement revoked and such person shall not be eligible for a concealed carry endorsement for a period of three years.

*Id.*

23. *Id.*

site of the infraction; thus, it is quite possible that the offending permit holder will suffer no more than a warning.<sup>24</sup> Moreover, if the owner or proprietor of the premises asks a permit holder to leave and he or she refuses, the permit holder most likely cannot even be charged with trespassing.<sup>25</sup>

In *Brooks v. State*, the Missouri Supreme Court upheld the state's concealed-carry law.<sup>26</sup> Judge Stephen Limbaugh, Jr., wrote the opinion of the court,<sup>27</sup> agreeing with other courts that had faced similar challenges to concealed-carry laws.<sup>28</sup> The court found that language of the Missouri Constitution that seems to prohibit the carrying of concealed weapons meant only that the constitution alone did not create a right to carry concealed weapons.<sup>29</sup> However, the court concluded that this language did not generally prohibit the carrying of concealed weapons.<sup>30</sup> Therefore, the court reasoned that the legislature was free to permit concealed weapons without violating the state constitution.<sup>31</sup>

The court also held that the law constituted an “unfunded mandate,” prohibited by the Hancock Amendment<sup>32</sup> to the Missouri Constitution, in four counties for which the anticipated costs of carrying out the law were demonstrated; the court thus gave those four counties the choice whether to use or not use county funds to

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24. *Id.*

25. See Ewing, *supra* note 19, at 140 (concluding that section 571.107.2 “would seem to preclude prosecution” of the permit holder for any crime including criminal trespass).

26. *Brooks v. State*, 128 S.W.3d 844, 848 (Mo. 2004).

27. *Id.* at 846.

28. See David B. Kopel, *The Licensing of Concealed Handguns for Lawful Protection: Support from Five State Supreme Courts*, 68 ALB. L. REV. 305, 306–09 (2005) (reviewing similar reasoning by the New Mexico Supreme Court); Thomas E.J. Hazard, *In the Crosshairs: Colorado's New Gun Laws*, COLO. LAW., Jan. 2004, at 11 (reviewing a similar challenge to concealed-carry law under Colorado's Constitution).

29. *Brooks*, 128 S.W.3d at 847.

30. *Id.*

31. *Id.* (“There is no constitutional prohibition against the wearing of concealed weapons; there is only a prohibition against invoking the right to keep and bear arms to justify the wearing of concealed weapons. Consequently, the General Assembly . . . has the final say in the use and regulation of concealed weapons.”).

32. Article X, sections 16 and 21, of the Missouri Constitution (provisions of the Hancock Amendment) prohibit the state from “requiring any new or expanded activities by counties and other political subdivisions without full state financing, or from shifting the tax burden to counties and other political subdivisions.” MO. CONST. art. X, §§ 16, 21.

distribute permits.<sup>33</sup> All four counties have recently begun to issue permits.<sup>34</sup> The court concluded that the “unfunded mandate” issue was not ripe as to the Missouri counties for which costs were not demonstrated.<sup>35</sup>

While the court did not explicitly address the disparate urban and rural concerns, the opinion contains some indication that the court ignored the urban perspective on the concealed-carry issue in favor of the rural perspective. For example, the court acknowledged that the defendants were denied their request to change venue from the City of St. Louis to rural Cole County, even though this was not an issue and the court did not need to address it.<sup>36</sup> Mentioning the rejected venue change when there was no need to do so may indicate that the court was at least aware of the divergent urban and rural opinions on gun legislation. In addition, the court dismissed, as a “series of far-fetched hypotheticals,” plaintiffs’ argument that the law should be void for vagueness because it “fails to provide adequate notice of the prohibited conduct and set standards for its fair enforcement.”<sup>37</sup> One of the hypothetical situations involved what the plaintiff called a “Hobson’s Choice” for business proprietors confronted with a permit-holding customer who refused to leave the business premises after being asked to do so.<sup>38</sup> This hypothetical situation seems more likely to occur in urban areas with many businesses than in rural areas that can only support a small number of businesses. Yet, the court dismissed the likelihood of this situation occurring as “far-fetched.”<sup>39</sup>

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33. *Brooks*, 128 S.W.3d at 850. The four counties were Jackson, Cape Girardeau, Greene and Camden. *Id.* Three of the four counties above could be classified as urban.

34. Jackson County was the last of the four counties to begin issuing permits after recently receiving \$48,000 from the county legislature “to cover overtime costs of issuing the permits.” *Sheriff Will Issue Conceal-Carry Permits*, ST. LOUIS POST-DISPATCH, Jan. 21, 2005, at B2. St. Louis County began accepting applications for permits on July 13, 2005, and St. Louis City followed suit on July 25. Greg Jonsson, *County, City Will Issue Concealed-Carry Permits*, ST. LOUIS POST-DISPATCH, July 13, 2005, at A1.

35. *Brooks*, 128 S.W.3d at 849–50.

36. *Id.* at 846. The defendants probably realized that a court in a rural county would be more likely to favor concealed-carry than a court in an urban county.

37. *Id.* at 851.

38. Brief for Respondents/Cross-Appellants at 107–08, *Brooks*, 128 S.W.3d 844 (No. SC 85674).

39. *Brooks*, 128 S.W.3d at 851. The fact that this represents a particularly urban argument that the Court flatly rejects is further outlined below.

Perhaps most strikingly, the court gave no deference to the fact that a majority of the population of Missouri, mostly urban voters, rejected Proposition B just four years earlier.<sup>40</sup> Plaintiff argued that “[t]he defeat of Proposition B . . . should preclude subsequent legislative action that allows what the Proposition would have allowed.”<sup>41</sup> The court responded by concluding that “[n]o court, at least in this state, has ever so held, and . . . to do so would be to call into question the entire concept of representative democracy.”<sup>42</sup> The court deemed it irrelevant that, on the issue of concealed-carry, Missouri’s representative democracy did not represent the will of the majority of citizens it was supposed to represent.<sup>43</sup>

In 2004, St. Louis County and St. Louis City won challenges to concealed-carry as an “unfunded mandate” prohibited by Missouri’s Constitution by demonstrating the law’s costs.<sup>44</sup> Consequently, St. Louis County and St. Louis City sheriffs were not required to distribute concealed-carry permits if they chose not to do so.<sup>45</sup> However, recent legislation amended the law so that it is no longer an unfunded mandate.<sup>46</sup> As a result, St. Louis City and St. Louis County have begun to issue permits.<sup>47</sup>

## II. RURAL AND URBAN ARGUMENTS

Living in a rural or urban environment shapes the way one thinks about, votes on, and judges matters concerning gun legislation. However, for too long, legal scholars have focused on the effects of gun control legislation, and ignored why people think the way they do about gun control.<sup>48</sup> The debate has focused on whether the

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40. *Id.*

41. *Id.*

42. *Id.*

43. *Id.*

44. *See* Concealed Weapon Update for St. Louis County Residents, <http://www.co-st-louis.mo.us/index.cfm?ViewMe=4817> (last visited May 16, 2006).

45. *Id.* Both St. Louis City and County refused to issue concealed-carry permits, leaving the St. Louis area as the last place in Missouri where permits were not distributed. *See* Jonsson, *supra* note 34, at A1.

46. Jonsson, *supra* note 34, at A1.

47. *Id.*

48. Perhaps this is due to the fact that statistical proof of belief is much harder to acquire than statistical proof of the results of a given policy.



availability of guns will result in less or more crime.<sup>49</sup> Much of the statistical research supports both sides of the argument.<sup>50</sup> As soon as one side concludes definitively, based on empirical data, that a society that allows open access to firearms has less crime and is safer than one that restricts access, the other side takes issue with the methodology of the research and definitively concludes that, in fact, the opposite is the case.<sup>51</sup> The fact that statistical data can be and has been manipulated to prove both points so frequently has led some to conclude that the statistical correlation between gun laws and gun violence is less important than the opinions held by the lawmakers and the citizens they represent.<sup>52</sup>

While empirical data has remained an important device for justifying gun legislation, it appears to have little bearing on how people develop beliefs about the legislation.<sup>53</sup> According to Kahan and Braman, “numerous studies have found that neither actual crime rates, perceived crime rates, prior victimization, nor fear of victimization strongly correlates with public opinion toward gun control.”<sup>54</sup> In other words, ideology matters more in determining what one thinks about gun control than the statistical link between crime and gun availability.<sup>55</sup> Further, whether one comes from an

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49. See JOHN R. LOTT, JR., *MORE GUNS, LESS CRIME: UNDERSTANDING CRIME AND GUN-CONTROL LAWS* (2d ed. 2000); Ian Ayres & John J. Donohue III, *Shooting down the “More Guns, Less Crime” Hypothesis*, 55 *STAN. L. REV.* 1193 (2003); Mark Duggan, *More Guns, More Crime*, 109 *J. POL. ECON.* 1086 (2001).

50. Kahan & Braman, *supra* note 4, at 1292–93 (“[S]ocial scientists have attacked the gun issue with a variety of empirical methods—from multivariate regression models to contingent valuation studies to public-health risk-factor analyses.”) (footnotes omitted).

51. See *id.* at 1293 (“Perhaps empirical social science has failed to quiet public disagreement over gun control because empirical social scientists have not yet reached their own consensus on what the consequences of gun control really are.”).

52. *Id.* at 1317 (concluding that “those involved in the gun control debate aren’t really arguing about whose perception of risk is more grounded in empirical reality; they are arguing about what it would *say* about our shared values to credit one or the other side’s fears through law”).

53. *Id.* at 1321 (“While predictably failing to change anyone’s mind, empirical analyses *do* reinforce the conviction of those who already accept their conclusions that a rational and just assessment of the facts *must* support their position.”).

54. *Id.* at 1312.

55. Kahan and Braman posit the cultural theory of risk as a way of assessing ideology. *Id.* at 1295–99. One’s risk perception is heavily influenced by the norms of one’s society. *Id.* at 1295. Further, one’s risk perception creates political ideology. *Id.* at 1296–97.

urban or rural environment is a very important factor contributing to one's ideology.<sup>56</sup> One's surroundings play a large role in the messages one receives and, ultimately, the conclusions one draws about guns and gun control.<sup>57</sup>

While there are exceptions to the generalizations about rural and urban populations, the way that both groups are perceived by those who represent them may ensure that future gun legislation appeals to the interests and opinions of both groups more equally than Missouri's current concealed-carry law.

### *A. The Rural Perspective*

This part identifies some characteristics that most rural individuals share and describes how these characteristics shape the rural view of gun control.<sup>58</sup> Once a basis for the rural opinion is established, this part explores how the general opinion on gun control was manifest in

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Of all the potential hazards that compete for our attention, the ones most likely to penetrate our consciousness are the ones that comport with our norm-pervaded moral evaluations: it is easy to believe that ignoble activities are also physically dangerous, and worthy ones benign. . . .

[P]ublic disagreements over risks are, in truth, disputes among citizens who subscribe to competing norms and to the conflicting cultural visions that those norms construct.

*Id.*

56. *Id.* at 1314 (noting that people "naturally look to those whom they trust to tell them what to believe about the consequences of gun control laws. The people they trust . . . are the ones who share their cultural outlooks, and who, as a result of those outlooks, are more disposed to credit one sort of gun control risk than the other") (footnote omitted).

57. The social norms upon which the cultural theory of risk depends are derived from a society of like-minded people. While Kahan and Braman focus their attention on the individual, describing individuals as hierarchical, individualist, solidaristic or egalitarian, this Note focuses more on the larger units these individuals form when they choose to congregate in densely or sparsely populated areas. *See id.* at 1303.

58. One important factor, not discussed in this Note, that shapes the way that urban and rural people view guns may be the segregation of gun ownership by population density lines. Rural individuals, especially men, are much more likely than urbanites to have grown up around guns, and subsequently to own them. TOM W. SMITH, 2001 NATIONAL GUN POLICY SURVEY OF THE NATIONAL OPINION RESEARCH CENTER: RESEARCH FINDINGS 12 (2001) (showing that rural people tend to oppose gun control) [hereinafter SMITH, 2001]; TOM W. SMITH, 1999 NATIONAL GUN POLICY SURVEY OF THE NATIONAL OPINION RESEARCH CENTER: RESEARCH FINDINGS 20 (2000), available at <http://www.norc.uchicago.edu/online/gunrpt.pdf>; JAMES D. WRITE ET AL., UNDER THE GUN: WEAPONS, CRIME, AND VIOLENCE IN AMERICA 122 (1983) ("Relative to nonowners, gun owners are disproportionately rural, Southern, male, Protestant, affluent, and middle class.").

specific arguments before the Missouri Supreme Court and the Missouri General Assembly, and how the court and legislature relied on these arguments as a rationale for the concealed-carry law.

Kahan and Braman describe opponents of gun control as hierarchical and individualistic.<sup>59</sup> They define a hierarchical person as one who “favors deference to traditional forms of social and political authority and is protective of the roles and status claims they entail.”<sup>60</sup> Rural gun advocates are most likely hierarchical.<sup>61</sup> They hold great deference for a literalist reading of the highest legal authority of the United States, the Constitution, or at least of its Second Amendment.<sup>62</sup> They also gravitate toward religious services that offer a sense of order and hierarchy.<sup>63</sup> Some gun advocates even cite the Bible as a basis for less restrictive gun control laws.<sup>64</sup>

Kahan and Braman describe an individualist as one who “prizes individual autonomy, celebrates free markets and other institutionalized forms of private ordering, and resents collective

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59. Kahan & Braman, *supra* note 4, at 1307. Kahan and Braman used the 1988–2000 General Social Survey to construct “scales for measuring respondents’ cultural orientations.” *Id.* at 1302. For more details about their methodology, see *id.* at 1303–08.

60. *Id.* at 1297.

61. The gun symbolizes the same things for rural people that it does for hierarchical people: courage, honor, martial prowess and masculinity. Dan M. Kahan & Donald Braman, *Caught in the Crossfire: A Defense of the Cultural Theory of Gun-Risk Perceptions*, 151 U. PA. L. REV. 1395, 1412 (2003) (noting that guns “are part of the symbolic equipment . . . that enables men to occupy distinctively male roles (father, hunter, protector) and exhibit distinctively male virtues (courage, honor, responsibility, martial prowess). They are the badges of institutions (the military, the police) that are themselves hierarchic”) (footnote omitted).

62. Simeon Kim, Comment, *Utopia or the Wild, Wild, West? The Right to Carry Concealed Handguns Law: Senate Bill 1190 and House Bill 2164*, 21 S. ILL. U. L.J. 597, 605 (1997) (“Right to carry law supporters argue that the Second Amendment guarantees a constitutional right to carry concealed weapons.” (citing William Van Alstyne, *The Second Amendment and the Personal Right to Arms*, 43 DUKE L.J. 1236, 1243 (1994))).

63. Not surprisingly, conservative Christian churches that preach about the hierarchy of heaven topped by an almost vindictive male God find their largest followings in rural areas. See DAVID ZEIDAN, *THE RESURGENCE OF RELIGION: A COMPARATIVE STUDY OF SELECTED THEMES IN CHRISTIAN AND ISLAMIC FUNDAMENTALIST DISCOURSES* 25–29 (2003); MEET YOUR NEIGHBORS: INTERFAITH FACTS 4 (2003), available at <http://fact.hartsem.edu/MeetNgbors1.pdf>.

64. See Clayton E. Cramer & David B. Kopel, “Shall Issue”: *The New Wave of Concealed Handgun Permit Laws*, 62 TENN. L. REV. 679, 724–30 (1995) (piecing together a Biblical and Judeo-Christian justification for the carrying of weapons); Aaron Wildavsky, *Choosing Preferences by Constructing Institutions: A Cultural Theory of Preference Formation*, 81 AM. POL. SCI. REV. 1, 11 (1987) (“Hierarchical cultures favor social conservatism, giving government the right to intervene in matters of personal morality.”).

interference with the same.”<sup>65</sup> It is likely that an individualistic person would be attracted to a rural lifestyle.<sup>66</sup> Generally, people who prefer to depend on themselves for everything from food to shelter pursue a rural lifestyle. Rural individualists believe that people should be free to acquire and use guns for everything from protection to hunting,<sup>67</sup> and they resent legislation that limits that freedom.

The Missouri Supreme Court had to choose between a hierarchical, literalist reading of the Missouri Constitution consistent with rural ideology, and a more broad, less literalist reading consistent with urban ideology.<sup>68</sup> In upholding concealed-carry, the court adopted the literalist interpretation of the state constitution, consistent with rural deference to the document.<sup>69</sup> This deference to the literal meaning also led the court to conclude that the concealed-carry statute constituted an “unfunded mandate” in the four counties that proved that the future expenses associated with distributing concealed-carry permits would not be funded by the state.<sup>70</sup>

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65. Kahan & Braman, *supra* note 4, at 1297.

66. Kahan, *supra* note 5, at 453 (noting that for gun control opponents, the gun symbolizes the “independent frontiersman who takes care of himself and his family with no interference from the state”) (citations omitted). This independent frontiersman image almost certainly resonates with rural individuals who, in many respects, live like the frontiersmen they idealize.

67. Rural residents are statistically more likely to carry guns for protection, hunting and target practice than their urban counterparts. SMITH, 2001, *supra* note 58, at 30. They are also statistically more likely to oppose gun control laws than their urban counterparts. *Id.* at 35.

68. Brooks v. State, 128 S.W.3d 844, 846–47 (Mo. 2004).

69. The Missouri Constitution states: “That the right of every citizen to keep and bear arms . . . shall not be questioned; but this shall not justify the wearing of concealed weapons.” MO. CONST. art. I, § 23. Applying common usage aided primarily by dictionary definitions, the Brooks court concluded that the Missouri Constitution must be read this way: “but this [the right of every citizen to keep and bear arms . . .] shall not justify [shall not warrant, shall not furnish grounds or evidence for, shall not support, or shall not provide sufficient legal reasons for] the wearing of concealed weapons.” 128 S.W.3d at 847 (bracket references in original). Applying its literal reading of the Constitution, the court held that “[t]here is no constitutional prohibition against the wearing of concealed weapons; there is only a prohibition against invoking the right to keep and bear arms to justify the wearing of concealed weapons.” *Id.*

70. Brooks, 128 S.W.3d at 850. The Hancock Amendment prohibits the state from “requiring any new or expanded activities by counties and other political subdivisions without full state financing, or from shifting the tax burdens to counties and other political subdivisions.” *Id.* at 848 (quoting MO. CONST. art. X, § 16). Section 571.094.10 provides for a sheriff’s fee of up to \$100 for the issuance of a concealed-carry permit. *Id.* However, because this fee must be deposited into the sheriff’s revolving fund, and thus is not used directly to fund the provisions of concealed-carry, the court concluded that the statute constituted an “unfunded

One rural argument against gun control that influenced the Missouri General Assembly was that concealed-carry laws are necessary to allow rural individuals to protect themselves from methamphetamine labs.<sup>71</sup> The Committee on Crime Prevention and Public Safety asserted that “[w]hen methamphetamine dealers set up labs in the woods nearby, and the closest sheriff’s deputy is a half hour away, a person needs to be able to protect himself.”<sup>72</sup> Methamphetamine labs are undeniably a significant problem in rural Missouri.<sup>73</sup> However, the ability of citizens to carry concealed weapons has little to do with their safety from methamphetamine producers.<sup>74</sup> If anything, a law permitting concealed weapons inadvertently gives the prosecution one less potential charge against a methamphetamine producer who has a concealed-carry permit.<sup>75</sup> While the concealed-carry law was meant to protect innocent rural citizens who happen to stumble across a methamphetamine lab by decriminalizing the carrying of a concealed weapon by permit

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mandate” in those counties that prove ripeness by showing evidence of increased costs. *Id.* at 850.

71. COMM. ON CRIME PREVENTION & PUB. SAFETY, *supra* note 8, at 4.

72. *Id.*

73. Missouri led the nation in the number of methamphetamine lab seizures from 2001 through 2003. Matthew Hathaway, *State Sees No Relief in Meth Fight*, ST. LOUIS POST-DISPATCH, Feb. 27, 2004, at B1. Approximately 2850 methamphetamine lab discoveries were reported in Missouri in 2003. *Id.* Jefferson County, a predominantly rural county that borders St. Louis County, led the State in 2003 with 161 raids. *Id.*

74. As Cramer and Kopel point out, “[t]he only circumstances under which a concealed handgun is likely to come to the attention of the police are that either the weapon was drawn, or that the person carrying it was searched by the police for some other, presumably criminal reason.” Cramer & Kopel, *supra* note 64, at 687–88. Consequently, in the middle of the woods with the nearest deputy over an hour away, if one comes across a methamphetamine lab, there would be no police officers to arrest the person for carrying a concealed weapon, just as there would be no officer to arrest the dangerous meth producer. Alternatively, if there were police officers around to arrest the innocent wayward wanderer for carrying a concealed weapon, presumably those officers would be more interested in capturing the inhabitants of the methamphetamine lab. Either way, the concealed weapon carrier escapes police questioning and subsequent criminal prosecution without the protection of a concealed-carry permit.

75. It is not a crime for a concealed-carry permit holder to carry a concealed weapon in the state of Missouri. MO. REV. STAT. § 571.030.4 (2000). Therefore, the prosecution may not charge a permit holder accused of methamphetamine related crimes with the additional crime of carrying a concealed weapon. As a consequence, the concealed-carry law may deny the prosecutor an opportunity to charge the accused with a Class D felony for unlawful use of a weapon, as described in section 571.030.7, if there is insufficient evidence to support a charge related to the methamphetamine production.

holders and by giving citizens the right to brandish weapons for protection, the law may, in fact, protect the methamphetamine producer more than it will protect the innocent rural traveler.<sup>76</sup>

The rural gun advocate's argument is that public safety depends on the ability to carry concealed weapons.<sup>77</sup> One compelling story familiar to the Missouri General Assembly is that of Dr. Suzanna Gratia.<sup>78</sup> Dr. Gratia was a Luby's cafeteria patron in the rural town of Killeen, Texas, who claims that she could have shot and killed a fellow patron who killed twenty-three people in ten minutes if Texas had been a concealed-carry state.<sup>79</sup> Unfortunately for the other patrons, Dr. Gratia obeyed the law at the time and kept her gun in her car.<sup>80</sup> This story and others like it helped convince the Missouri legislature that, in the interest of public safety, citizens should be allowed to carry concealed weapons.<sup>81</sup>

### *B. The Urban Perspective*

This part identifies the characteristics that many urban individuals share and describes how these characteristics shape a very different opinion of gun control than that held by their rural neighbors.<sup>82</sup> This part then discusses the specific urban arguments against concealed-carry that the Missouri Supreme Court and General Assembly ignored.

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76. It may no longer be a crime in Missouri for permit holders to carry a concealed firearm, but it is still a crime to discharge a firearm at any person or any building or habitable structure unless the person acted lawfully in self-defense, whether or not one owns a concealed-carry permit. *Id.* § 571.030.1(9). The firearm arguably serves little protective purpose to the person who stumbles upon a methamphetamine lab until the weapon is discharged at the producer of the methamphetamine or at the lab itself. However, discharging the weapon may open the innocent rural traveler to criminal prosecution unless self-defense is established, regardless of the person's status as a permit holder.

77. See generally LOTT, *supra* note 49; Cramer & Kopel, *supra* note 64.

78. See Cramer & Kopel, *supra* note 64, at 718–19.

79. *Id.* at 719.

80. *Id.*

81. A few months after the incident, Dr. Gratia testified before the Missouri Legislature in favor of concealed-carry. *Id.*

82. While gun advocates see the gun as a symbol of rugged individualism and protection, gun control proponents take an opposite view. Kahan, *supra* note 5, at 455–57. They deride the rural symbol as “uncivilized” and “atavistic.” *Id.* at 456.

While rural gun advocates tend to be individualistic and hierarchical, urban gun control advocates tend to be egalitarian and solidaristic.<sup>83</sup> The egalitarian person “abhors social stratification, distrusts the social and political authority structures that rest on such differentiation, and favors collective action to equalize wealth, status, and power.”<sup>84</sup> Contrary to their hierarchical counterparts, egalitarians favor a less literalist interpretation of the documents that are the pinnacles of American law.<sup>85</sup> Gun control proponents prefer to abandon the rigid, literalist reading of the Second Amendment’s right to bear arms in favor of a policy banning the private ownership of all guns, similar to policies adopted by several European countries.<sup>86</sup>

Urban individuals tend not only to be egalitarian, but also solidaristic, defined as “logically opposed to individualism.”<sup>87</sup> Urban individuals generally have an easier time than their rural counterparts in relying on other people for support.<sup>88</sup> Perhaps this is because urban populations are used to receiving aid from and giving aid to others.<sup>89</sup> Whether it is with a free meal from Meals on Wheels or a free house from Habitat for Humanity, large urban populations benefit more from social welfare organizations than smaller rural populations.<sup>90</sup>

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83. Kahan & Braman, *supra* note 4, at 1303 (positing that the urban rejection of traditional honor norms is tied to an egalitarian “opposition to social differentiation” and “tolerance of deviance”). Meanwhile, the perception that gun ownership is “uncivilized” represents a threat to a solidaristic individual primarily concerned with the establishment and maintenance of civilization. *See supra* note 82.

84. Kahan & Braman, *supra* note 4, at 1297.

85. *See* Richard Hofstadter, *America as a Gun Culture*, 21 AM. HERITAGE, Oct. 1970, at 4.

86. *Id.* (asserting that America is the “only nation so attached to the supposed ‘right’ to bear arms that its laws abet assassins, professional criminals, berserk murderers, and political terrorists at the expense of the orderly population,” and that “[in other countries in which] rights are rather better protected than in ours . . . our arms control policies would be considered laughable”).

87. Kahan & Braman, *supra* note 4, at 1303.

88. *See* Howard V. Brabson & David P. Himle, *The Unemployed and the Poor: Differing Perceptions of Their Needs in a Community*, 13 SOC. THOUGHT 24 (1987); Rebecca Joyce Kissane, *What’s Need Got to Do with It? Barriers to Use of Nonprofit Social Services*, J. SOC. & SOC. SERVICES, June 2003, at 2, available at [http://www.findarticles.com/p/articles/mi\\_m0CYZ/is\\_2\\_30/ai\\_101762546/print](http://www.findarticles.com/p/articles/mi_m0CYZ/is_2_30/ai_101762546/print) (pointing to inconvenient agency location, inadequate hours of service, insufficient information about the agency, and fear of stigmatization as causes for the relative infrequency with which rural populations utilize social services).

89. *See* Kissane, *supra* note 88.

90. *Id.*

Some people who choose to live in urban areas wish not only to benefit from the close proximity of others, but also to provide benefits to others who live close to them.<sup>91</sup>

Urban individuals see gun possession as a threat to their sense of community. Most urbanites do not shoot the deer or rabbit that stumbles onto their property, own concealable guns, or shoot targets or humans.<sup>92</sup> Nothing is more destructive to a sense of community than murder. Consequently, many urban dwellers frown on the possession of weapons as an all-too-easy way to end a community.<sup>93</sup> However, the Missouri General Assembly and the Missouri Supreme Court abandoned the urban dweller's desire for a community in which it is more difficult to end another person's life than merely pointing a gun and pulling the trigger.<sup>94</sup>

While the *Brooks* majority's holding favored the rural hierarchal perspective, Chief Justice White adopted an urban egalitarian reading of the state constitution in his dissent.<sup>95</sup> Reading the Hancock Amendment literally, the majority held that only the four counties that demonstrated evidence of additional costs had standing to challenge the constitutionality of concealed-carry as an "unfunded mandate."<sup>96</sup> Alternatively, Chief Justice White advocated an expansive reading of the Hancock Amendment, which required the repeal of concealed-carry as an "unfunded mandate" in every Missouri county, regardless of a showing of incurred costs.<sup>97</sup>

Another particularly urban concern that Missouri overlooked when passing the concealed-carry law is the high cost that the law poses to urban businesses.<sup>98</sup> Because more businesses operate in large

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91. More social service organizations are available and located in urban areas than in rural areas. NANCY M. PINDUS, IMPLEMENTING WELFARE REFORM IN RURAL COMMUNITIES 1-2 (2001), available at <http://www.urban.org/UploadedPDF/rural-welfare-reform.pdf>.

92. The most common reason that people living in large cities carry guns is for target shooting (11.8%), followed by self-protection (7.9%), hunting (5.8%), other (3.5%) and work (1.7%). See SMITH, 2001, *supra* note 58, at 30.

93. Residents of urban areas are most supportive of measures to regulate guns. See *id.* at 12.

94. See COMM. ON CRIME PREVENTION & PUB. SAFETY, *supra* note 8, at 4 (relying on the need for self-defense as a justification for the legislation).

95. *Brooks v. State*, 128 S.W.3d 844, 851-55 (Mo. 2004) (White, C.J., dissenting).

96. *Id.* at 850.

97. *Id.* at 852.

98. Donnie E. Martin, "Concealed Carry" Legislation and Workplace Violence: A



population centers, office building violence is a serious and especially urban concern.<sup>99</sup> Workplace violence has been “the paramount security concern for corporations across America.”<sup>100</sup> The costs incurred because of office violence go beyond damage to property and harm to employees that are the immediate results of the violence.<sup>101</sup> Businesses also lose future employees and clients if they acquire a reputation as an unsafe place.<sup>102</sup> They may suffer large litigation costs to compensate employees who allege wrongful hiring practices or inadequate safety procedures.<sup>103</sup> In addition to negligent hiring and negligent retention claims in state courts, employers could also face federal liability.<sup>104</sup> Finally, they may incur costs associated with establishing “no gun” policies.<sup>105</sup> These costs will be amplified in Missouri by concealed-carry laws.<sup>106</sup>

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*Nightmare in Employers' Liability?*, 65 DEF. COUNS. J. 100, 103 (1998) (noting many of the jobs that the National Institute for Occupational Safety and Health (NIOSH) has identified as having the highest rates of occupational homicide as “taxicab drivers, law enforcement officers, hotel clerks, gas station workers, security guards, stack handlers, store owners/managers, and bartenders,” jobs which are most prevalent in cities).

99. *See id.* Because most employees require free access to the workplace and to one another to do their jobs, co-worker violence is already difficult to stop. *Id.* Allowing employees the option of carrying concealed weapons into the workplace makes it considerably more difficult to deter co-worker violence.

100. *Id.*

101. *See id.* at 103–05 (discussing theories of employer liability); *see also* Hazard, *supra* note 28, at 16–17 (discussing the implications of banning weapons in businesses).

102. *See* Martin, *supra* note 98, at 105 (advising employers to implement procedures to guarantee “quality pre-hiring background checks and adequate supervision of employees” to avoid liability).

103. *Id.* at 104. The article describes the prima facie requirements for a claim of either negligent hiring or negligent retention in state courts as:

- (1) the employee was unfit for hiring or retention;
- (2) the employer knew or should have known that the employee was unfit;
- (3) the employer could foresee that the employee, through his employment, would come into contact with the plaintiff under circumstances creating a risk of danger to the plaintiff;
- (4) the plaintiff was injured;
- and (5) the employer’s negligence was the proximate cause of the injury.

*Id.*

104. Hazard, *supra* note 28, at 17 (suggesting that allowing guns in the workplace may violate the general duty clause of the Occupational Safety and Health Act, which imposes upon employers an obligation to provide a safe work environment “free from recognized hazards that are causing or are likely to cause death or serious physical harm” (quoting 29 U.S.C. § 654(a)(1) (2000))).

105. For the proposition that adopting a “no weapons” policy may help prove that the employer could foresee potential injury through gun violence, *see id.* at 16 (referencing *Massie v. Godfather's Pizza, Inc.*, 844 F.2d 1414 (10th Cir. 1988), in which the court held that the

Moreover, the institution and enforcement of “no gun” policies by businesses will consume precious resources.<sup>107</sup> Large corporations may need to develop a committee on guns to research and implement a comprehensive “no gun” policy. In smaller businesses, already overworked employees will have to divert their attention from daily management tasks to the implementation of a gun policy that will protect against liability. Ironically, “no gun” policies designed to protect against liability may increase a corporation’s loss when workplace violence occurs.<sup>108</sup> The existence of a “no gun” policy may serve as proof of the employer’s duty to its employees to hire employees who will comply with the policy and enforce it when another employee violates it.<sup>109</sup> Once this duty is established, a claim of negligent hiring is much easier to establish.<sup>110</sup>

Even if the “no gun” policy is perfectly devised, its enforcement could be extremely costly.<sup>111</sup> Businesses will not only have to post no

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adoption of a “robbery” policy established that the criminal conduct at issue in the case was foreseeable).

106. See generally Ewing, *supra* note 19, at 139–40.

107. Martin, *supra* note 98, at 106. Any no-weapons policy must be carefully drafted because an “ambiguous prohibition policy may lead to additional liability exposure for the employer.” *Id.* The employer “may subject itself to negligence liability if the employee cannot defend against ‘violent’ third parties because the employer has taken away the legal right to self-protection.” *Id.* at 106–07. Simply researching and drafting the policy correctly could prove a costly process involving many attorneys.

108. See Hazard, *supra* note 28, at 16.

109. *Id.* at 16–17.

110. *Id.* Also, in states such as Colorado that make it illegal for an employer to terminate an employee for lawful off-work activities, the employer’s suspicion or even knowledge that the permit holder legally carried a concealed weapon away from work should not be used as a justification for the employee’s termination. *Id.* at 17. Relying on the use of guns outside of work as a justification for terminating a permit holder may make the employer liable for wrongful termination. *Id.*

111. Martin, *supra* note 98, at 107. Martin states that well devised “no gun” policies should contain the following elements:

- [1] The policy should be predicated on an employer’s legal duty to provide a safe workplace to its employees and to exercise reasonable care in the control and supervision of its employees . . .
- [2] The policy should be broad enough to cover concealed and other weapons carried on an employee’s or invitee’s person, in the parking lot, or in a vehicle brought on the employer’s premises. The policy should expressly state that despite a jurisdiction’s right to carry law, the employer is allowed to prohibit concealed weapons in the workplace . . .
- [3] The policy should [define terms] such as “employees,” “weapons” and “possessing” . . .
- [4] [The policy should comply with the notice requirements of the jurisdiction through the use of signs or other forms of notice] . . .
- [5] Employers may want to include a provision authorizing

gun signs, but, in some situations, will have to hire security personnel and install screening technology at the entrances of the building to more fully protect themselves from liability.<sup>112</sup> In Missouri, where the most a building proprietor can do to a concealed-carry permit holder who is violating the “no gun” policy is ask them to leave, enforcement of a “no gun” policy will be nearly impossible.<sup>113</sup> Calling the police on a permit holder who is brandishing a concealed weapon is pointless because the permit holder cannot even be prosecuted for trespassing if he or she refuses to leave.<sup>114</sup> The small fine that potentially awaits the unruly permit holder is little deterrence.<sup>115</sup> This was the “Hobson’s Choice” dilemma described by the *Brooks* plaintiffs and rejected by the Missouri Supreme Court as a “far-fetched” hypothetical that should be dealt with after it arose.<sup>116</sup>

### III. WHY ABANDON URBAN VOTERS?

There may be no dispositive reason why both the Missouri General Assembly and the Missouri Supreme Court disregarded the interests of Missouri’s urban constituency in favor of those of the rural population, but the General Assembly’s decision could certainly have been influenced by money, by the structure of the legislature, or

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them to conduct searches at work [provided these searches do not intrude upon areas within the employees’ exclusive control where employees have a reasonable expectation of privacy] . . . [6] [If employers include search provisions,] [e]mployers should require their employees to sign consent forms . . . [and the employer] should state plainly that desks, storage areas and lockers are considered employer property . . . [7] [Each employee should be required to sign a written acknowledgment showing that the employee has reviewed the policy] . . . [8] The policy should state that any employee or applicant who violates the policy is subject to disciplinary action, up to and including termination of employment without warning.

*Id.*

112. While screening is fairly innocuous when conducted on employees who consent to such screening, it becomes a potential for liability when conducted on customers. Hazard, *supra* note 28, at 18. Business owners face a risk of invasion of privacy and assault claims if they try to enforce their “no gun” policies by patting down their patrons to determine whether the customer is carrying a concealed gun. *Id.* Even if the fear of liability would not sufficiently deter certain screening conduct by business owners, the potential loss of customers unwilling to submit to pat downs probably would. *Id.*

113. See *supra* notes 22–25 and accompanying text.

114. See *supra* note 25 and accompanying text.

115. Ewing, *supra* note 19, at 139.

116. *Brooks v. State*, 128 S.W.3d 844, 851 (Mo. 2004).

by the legislators' personal beliefs that mirror those of the rural population. For example, interest groups such as the National Rifle Association (NRA) may have had a special influence on some of the Missouri legislators.<sup>117</sup> If the NRA was willing to spend \$3.8 million in 1999 to advertise for the adoption of Proposition B,<sup>118</sup> it may have also been willing to spend money to convince legislators in 2003 that a substantially similar bill was necessary. While it may seem cynical to suggest that Missouri's concealed-carry legislation was influenced by the NRA, other commentators hold similar views.<sup>119</sup>

Secondly, the way that Missouri's political districts are currently drawn may make politicians who vote in favor of gun availability more likely to be re-elected.<sup>120</sup> This theory is incorrect, however, if the rural population is really where gun supporters lie, because Missouri's General Assembly is broken into districts based on population. Consequently, to constitute a supermajority such as the one needed to override the gubernatorial veto on concealed-carry, some urban representatives and senators must have voted for the law.<sup>121</sup> Perhaps the real reason that the General Assembly rejected the urban in favor of the rural argument is that Missouri's General Assembly is composed of people who share the same beliefs concerning gun control as the rural populations.

Whereas the Missouri General Assembly directly confronted the divide between urban and rural opinions on concealed-carry when it considered the law, the Missouri Supreme Court did not explicitly

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117. Despite its denial that it contributed to concealed-carry legislation in Missouri, the NRA supported the campaigns of a number of Missouri legislators. *Missouri Backers of Concealed Weapons Ignore the Public*, *supra* note 7, at B6. It seems reasonable that the NRA expected support of concealed-carry in return. *Id.*

118. Dionne, *supra* note 7, at D17.

119. See William Greider, *A Pistol-Whipped Nation*, in *CONTROVERSIES IN AMERICAN PUBLIC POLICY* 436 (John A. Hird ed., 1995) (suggesting that the single biggest obstacle to gun control legislation is the NRA and its powerful lobbying efforts). Greider goes on to suggest that the NRA actually benefits from gun violence. *Id.* at 437. The NRA uses every act of gun violence on an unarmed victim to prove its point that the only way to stop gun violence is to arm everyone. *Id.*

120. See *infra* note 121.

121. For more information on the structure of the Missouri General Assembly, see *supra* note 18. It is important to reiterate that in 2003, 132 of the 196 members of the Missouri General Assembly voted to override Governor Holden's veto of the bill. This means that a number of urban politicians voted in the supermajority for concealed-carry.

deal with this issue. The court relied heavily on an amicus brief by the NRA to guide its reading of the Missouri Constitution.<sup>122</sup> The court then chose to heed defendant Bull's Eye's advice to disregard plaintiff's arguments as "policy."<sup>123</sup> Therefore, the court may not have considered how its decision would further divide the two populations. However, the court likely would have done nothing differently had the policy issues discussed in this Note been brought forward.<sup>124</sup> It was aware that a majority of the Missouri population voted against virtually the same law just four years before it rendered its decision.<sup>125</sup> The court's response was that a legislature ignoring majority views was a problem for the legislature and the democratic process.<sup>126</sup>

#### IV. SOLUTIONS FOR URBANITES

Missouri's urban population has several options to make its voice heard on the issue of concealed-carry now that the law is in place. The first option is to elect new, more representative legislators who will repeal the current concealed-carry law or amend it to better reflect the divergent views on gun legislation. Senator Doyle Childers, a Republican from Reeds Spring, proposed one such amendment during the drafting of the bill that eventually became the

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122. Brief of Amicus Curiae National Rifle Ass'n of America, Inc., at 7–16, *Brooks v. State*, 128 S.W.3d 844 (Mo. 2004) (No. SC 85674) (laying out the interpretation of the disputed Constitutional phrase eventually adopted by the Court).

123. Appellants Bull's Eye, LLC's Reply Brief to Respondent's Brief at 15, 18, *Brooks*, 128 S.W.3d 844 (No. SC 85674).

124. Courts generally defer to the legislature on matters of public policy. This may stem from a prevalent view of the judiciary branch of government as the interpreters of the law, not the makers of the law. Courts intervene for public policy reasons only when the public policy is particularly compelling. While the interest of a large segment of the population seems compelling, gun control is such a divisive issue that it is better left to the political process in a democracy, despite the system's inherent flaws. For interesting discussions of the court's place in a democracy, see ERWIN CHERMERINSKY, *CONSTITUTIONAL LAW* (2001); Allan Ides, *The American Democracy and Judicial Review*, 33 ARIZ. L. REV. 1 (1991); Burt Neuborne, *Making the Law Safe for Democracy: A Review of "The Law of Democracy Etc."*, 97 MICH. L. REV. 1578 (1999) (reviewing SAMUEL ISSACHAROFF ET AL., *THE LAW OF DEMOCRACY: LEGAL STRUCTURE OF THE POLITICAL PROCESS* (1998)).

125. *Brooks*, 128 S.W.3d at 851.

126. *Id.*

concealed-carry law.<sup>127</sup> The proposed amendment “would [have] exempt[ed] counties with populations of 200,000 or more from the concealed weapons laws.”<sup>128</sup> As a reason for this amendment, Senator Childers cited the fact that the main opponents of Proposition B were located in urban areas.<sup>129</sup> The amendment was eventually dropped to avoid potential legal challenges, but Senator Childers may have had the right idea from an urban point of view.

Missourians may also lobby their current elected officials to adopt policies that are more in line with citizen opinions on concealed-carry legislation. A representative democracy works best when the representatives know how their constituents feel about certain issues. Pro-gun activists lobby successfully through grassroots letter writing campaigns and larger scale advertising efforts. Perhaps anti-gun activists can adopt similar tactics to inform their representatives about the concerns of urban populations.<sup>130</sup>

The final, and perhaps most realistic, option for urban populations concerned with concealed-carry is to do nothing. The law has apparently not been as popular as expected. Far fewer people are applying for permits than anticipated when the legislation was passed.<sup>131</sup> One reason for this is that many concealed-carry proponents primarily wanted the right to carry guns in their cars’

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127. Culp, *supra* note 17.

128. *Id.*

129. *Id.*

130. One suggestion for anti-gun advertising campaigns would be to target the fears of their rural counterparts discussed throughout this Note. Rural gun advocates who primarily value independence and hierarchy would respond most favorably to a campaign that frames gun control in hierarchical and independent terms. This is a difficult proposition, but a campaign that insinuates that large corporations attempt to control the actions of individuals through the purchase of weapons may be an option.

Similarly, gun advocates who wish to convert their urban counterparts would be wise to frame the issue in egalitarian and solidaristic terms. Again, this is a difficult proposition. Perhaps carrying concealed weapons could be presented as a way of promoting the common good of individual liberty.

131. Linda Redeffer, *Interest in Conceal Permits Below Expectations*, SEMISSOURIAN.COM, Dec. 7, 2004, [http://semissourian.com/story.html\\$rec=151804](http://semissourian.com/story.html$rec=151804) (noting that while the Missouri State Highway Patrol estimated that 60,000 applications for permits would be made in the first year based on the response in Texas and Oklahoma when those two states adopted similar legislation, the total number of background checks the patrol made on individuals seeking permits was only 13,748 between March and November).

glove compartments, something they can now do without a permit.<sup>132</sup> Carrying a concealed weapon is still a crime in Missouri if the carrier does not have a permit.<sup>133</sup> If the number of permit applications is low and confined to rural areas, the urban population is unlikely to be substantially affected in a negative way.

#### CONCLUSION

Gun control is a very divisive issue, not because people can logically deduce the quantifiable results of open access to weapons as economists would have us believe, but rather because guns symbolize very different things to different people. The effect of wider gun availability on crime rates only seems to matter to people who study that effect. What really matters are the messages people receive from those around them concerning weapons and the use of weapons. Guns represent powerful symbols of the things rural people believe in, such as respect for hierarchical structures and independence. Meanwhile, guns represent equally powerful symbols of the things urban people fear most, such as the destruction of community and oppression of the many by the few.

There may be no way to change peoples' opinions about guns, but the lawmakers of a democratic society should seek to identify these views and account for them when drafting laws. Missouri's concealed-carry law completely disregards the opinions of almost half of its population. While that half of the population whose interests and opinions were ignored will likely experience little or no direct effects from this particular law, Missouri's legislative and judicial branches have sent its urban populations a clear and disturbing message: we do not care what you think and we do not have to. Other state governments may feel free to follow suit.

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132. *Id.*

133. MO. REV. STAT. § 571.030.1 (2000). The statute states “[a] person commits the crime of unlawful use of weapons if he or she knowingly: (1) Carries concealed upon or about his or her person a knife, a firearm, a blackjack or any other weapon readily capable of lethal use.” *Id.*