No. 23A___

In the Supreme Court of the United States

STATE OF MISSOURI, ET AL.,
Applicants,
v.

UNITED STATES OF AMERICA,
Respondent.

Emergency Application for Immediate Administrative Relief and a Stay of the Injunction Issued by the United States District Court for the Western District of Missouri

APPENDIX TO EMERGENCY APPLICATION FOR IMMEDIATE ADMINISTRATIVE RELIEF AND A STAY OF THE INJUNCTION ISSUED BY THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI

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TABLE OF CONTENTS

Appendix: **Page:**

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 23-1457

United States of America

Appellee

v.

State of Missouri, et al.

Appellants

Missouri Firearms Coalition, et al.

Amici on Behalf of Appellant(s)

Brady Center to Prevent Gun Violence, et al.

Amici on Behalf of Appellee(s)

Appeal from U.S. District Court for the Western District of Missouri - Jefferson City
(2:22-cv-04022-BCW)

ORDER

The motion for stay of judgment and injunction pending appeal is denied.

September 29, 2023

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI CENTRAL DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 2:22-CV-04022-BCW
	)	
STATE OF MISSOURI, et al.,	)	
	)	
Defendants.	)	

AMENDED ORDER

Before the Court is the parties' Joint Motion to Amend Order of March 9, 2023. (Doc. #98). The Court, being duly advised of the premises and consistent with the parties' agreement, grants said motion.

On March 9, 2023, the Court issued an Order temporarily administratively staying the Order and Judgment entered in this case on March 7, 2023 (Doc. #88), pending the Eighth Circuit's consideration of whether the Order and Judgment should be stayed pending appeal. (Doc. #96). In the Order, the Court directed the parties to meet and confer as to a reasonable expedited briefing schedule such that the motion to stay pending appeal would be fully briefed before the Eighth Circuit by March 16, 2023. (Doc. #96).

On March 10, 2023, the parties notified the Court of their intent to jointly seek amendment of the March 9, 2023 Order. On March 13, 2023, the parties filed the instant joint motion requesting that the Court amend the March 9, 2013 Order to reflect that the motion to stay would be fully briefed before the Eighth Circuit by at latest March 20, 2023. Consistent with the parties' agreement, the Court grants the motion and amends the March 9, 2023 Order as follows. It is hereby

ORDERED Defendants may file their expected appellate motion to stay no later than March 13, 2023. Thereafter, Plaintiff's response shall be filed no later than March 17, 2023. Then, Defendants' reply, if any, shall be filed no later than March 20, 2023. In sum, the Court amends the March 9, 2023 Order to reflect that the motion to stay pending appeal shall be fully briefed for the Eighth Circuit's consideration by **March 20, 2023**.

IT IS SO ORDERED.

DATE: March 13, 2023

/s/ Brian C. Wimes
JUDGE BRIAN C. WIMES
UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI CENTRAL DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 2:22-CV-04022-BCW
	)	
STATE OF MISSOURI, et al.,	)	
	)	
Defendants.	)	

ORDER

Before the Court is Defendant the State of Missouri's Emergency Motion for Stay of Judgment and Injunction Pending Appeal. (Doc. #91). The Court, consistent with its oral ruling during the telephone conference with the parties on March 9, 2023, grants in part and denies in part said motion. The motion is denied to the extent it requests a stay pending appeal and is granted as to the request for an administrative stay.

On March 8, 2023, Defendant the State of Missouri filed a motion to stay judgment pending appeal. (Doc. #91). Defendant alternatively sought an administrative stay until such time the parties could brief the issue of a stay to the Eighth Circuit Court of Appeals. The motion requested ruling within two days.

On March 9, 2023, the Court held a telephone conference with the parties and heard argument on the motion. In course of the telephone conference discussion, Plaintiff indicated its opposition to Defendant's motion to stay pending appeal and alternative request for administrative stay. Plaintiff stated the intent to rest on its oral argument by telephone, without need of filing a written opposition in this Court.

On consideration of Defendants' Motion to Stay this Court's Order and Judgment pending appeal (Doc. #91) and the arguments made before the Court at the hearing on March 9, 2023, the Court will grant in part and deny in part the pending motion. Accordingly, it is hereby

ORDERED Defendant the State of Missouri's Emergency Motion for Stay of Judgment and Injunction Pending Appeal (Doc. #91) is GRANTED IN PART AND DENIED IN PART. The Order and Judgment is temporarily administratively stayed until such time as the U.S. Court of Appeals for the Eighth Circuit rules on Defendants' expected motion to stay the Order and Judgment pending appeal. It is further

ORDERED the parties shall meet and confer as to a reasonable expedited briefing schedule such that the motion to stay the Order and Judgment shall be fully briefed for the Eighth Circuit's consideration by **March 16, 2023.** The temporary administrative stay shall remain in place until the Eighth Circuit determines whether the Order and Judgment (Doc. #88) should be stayed pending appeal.

IT IS SO ORDERED.

DATE: March 9, 2023

/s/ Brian C. Wimes
JUDGE BRIAN C. WIMES
UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI CENTRAL DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 2:22-CV-04022-BCW
	)	
STATE OF MISSOURI, et al.,	)	
	)	
Defendants.	)	

OPINION AND ORDER

Before the Court is Plaintiff's Motion for Summary Judgment (Doc. #8), Defendants' Motion to Dismiss Under Fed. R. Civ. P. 12(b)(1) (Doc. #13), and Defendants' Motion to Dismiss Under Fed. R. Civ. P. 12(b)(6) (Doc. #15). The Court, being duly advised of the premises, denies Defendants' motions to dismiss (Docs. #13 & #15) and grants Plaintiff's motion for summary judgment (Doc. #8).

BACKGROUND

On February 16, 2022, Plaintiff the United States of America filed a complaint in this Court against Defendants the State of Missouri, Michael L. Parson in his official capacity as the Governor of the State of Missouri, and Andrew Bailey[1] in his official capacity as the Attorney General of the State of Missouri (collectively, "Defendants"). The United States challenges the constitutionality of Missouri General Assembly House Bill No. 85, signed into law on June 12, 2021, and codified in Mo. Rev. Stat. §§ 1.410 – 1.485 ("SAPA").

[1] Andrew Bailey in his official capacity as Missouri Attorney General is substituted for former Missouri Attorney General Eric Schmitt. Fed. R. Civ. P. 25(d).

The United States seeks declaratory and injunctive relief against Defendants' implementation and enforcement of SAPA through three claims for relief: (I) Supremacy Clause; (II) preemption; and (III) violation of intergovernmental immunity. (Doc. #1).

The United States seeks a declaratory judgment that SAPA is invalid, null, void, and of no effect, and further seeks a declaration "that state and local officials may lawfully participate in joint federal task forces, assist in the investigation and enforcement of federal firearm crimes, and fully share information with the Federal Government without fear of [SAPA's] penalties." (Doc. #1 at 26-27). Further, the United States seeks injunctive relief against SAPA's implementation and enforcement by Defendants, as well as costs in pursuing this action and any other just and proper relief. (Doc. #1 at 27).

On February 28, 2022, the United States filed the instant motion for summary judgment that there is no genuine issue of material fact and it is entitled to declaratory and injunctive relief as a matter of law. (Doc. #8). In the course of the summary judgment briefing, Defendants filed two motions to dismiss, one under Fed. R. Civ. P. 12(b)(1), and one under Fed. R. Civ. P. 12(b)(6). (Docs. #13 & #16). These three motions are fully briefed and ripe for consideration, alongside the amici curiae briefs filed in this matter. (Docs. #7, #15-1, #21-1, #30, #38, #42, #44, #46, #53, #55, #58, #60, #61, #63-#76, #78-#83).

A. Defendants' motion to dismiss under Fed. R. Civ. P. 12(b)(1) (Doc. #13) is denied.

The Court first considers Defendants' motion to dismiss for lack of subject matter jurisdiction. Kronholm v. Fed. Deposit Ins. Corp., 915 F.2d 1171, 1174 (8th Cir. 1990) (citing Barclay Square Props. v. Midwest Fed. Sav. & Loan, 893 F.2d 968, 969 (8th Cir. 1990)) ("Subject-matter jurisdiction is a threshold requirement which must be assured in every federal case.").

Defendants argue the United States' complaint should be dismissed under Fed. R. Civ. P. 12(b)(1) for two reasons: (1) lack of standing; and (2) lack of cause of action.

Because Defendants challenge subject matter jurisdiction on the face of the complaint, "all of the factual allegations concerning jurisdiction are presumed to be true and the motion is successful if the plaintiff fails to allege an element necessary for subject matter jurisdiction." Titus v. Sullivan, 4 F.3d 590, 593 (8th Cir. 1993) (citing Eaton v. Dorchester Dev., Inc., 692 F.2d 727, 731-32 (11th Cir. 1982)).

1. The United States has standing.

Defendants argue that because the United States does not demonstrate any of the three requirements for standing, the complaint should be dismissed for lack of subject matter jurisdiction. (Doc. #13).

"[S]tanding is an essential and unchanging part of the case-or-controversy requirement of Article III." Lujan v. Defs. of Wildlife, 504 U.S. 555, 560 (1992). "To establish standing, a plaintiff must show that he has suffered an injury in fact that is fairly traceable to the challenged conduct of the defendant and will likely be redressed by a favorable decision." Digit. Recognition Network, Inc. v. Hutchinson, 803 F.3d 952, 956 (8th Cir. 2015) (citing Lujan, 504 U.S. at 560-61) (internal citations and quotations omitted) (standing requires (1) "an injury in fact – an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical"; (2) "a causal connection between the injury and the conduct" of which plaintiff complains that is "fairly traceable" to the defendant; and (3) a likelihood, "as opposed to merely speculat[ion]" that the injury will be redressed by a favorable decision)).

First, Defendants rely on Muskrat v. United States, 219 U.S. 346 (1911) to argue that there is no case or controversy, nor any harm or threat of harm to the United States that is attributable

to SAPA. (Doc. #13 at 109). Second, Defendants argue the United States cannot show causation because Defendants do not enforce SAPA; rather, the statutory scheme is enforced through private civil action. Third, Defendants argue the United States cannot show redressability because declaratory and/or injunctive relief against Defendants would not redress the United States' alleged harm.

a. The United States demonstrates injury in fact.

Defendants argue the United States has no injury in fact for two reasons: (1) the United States alleges no case or controversy under Muskrat; and (2) only state actors, and not the United States, are subject to regulation under SAPA.

Muskrat involved a congressional act relating to plaintiffs' rights to Cherokee lands and funds. 219 U.S. at 349-350. The legislation conferred jurisdiction "upon the court of claims with the right of appeal, by either party, to the Supreme Court of the United States, to hear, determine, and adjudicate each of said suits." Id. at 350. When subsequent legislation potentially increased the number of individuals with rights to the lands and funds at issue, plaintiffs sued. Id. at 348-49.

The Supreme Court of the United States dismissed the Muskrat plaintiffs' claims for lack of jurisdiction because, while the legislation authorized plaintiffs' suit, plaintiffs had incurred no injury; therefore, plaintiffs' suit sought only "to settle the doubtful character of the legislation in question . . . ." Id. at 361. Because the Muskrat plaintiffs did not present a "justiciable controversy within the authority of the court, acting within the limitations of the Constitution under which it was created," the Supreme Court reversed and remanded with instructions to dismiss for lack of jurisdiction. Id. at 363.

Here, in contrast with Muskrat, the United States demonstrates an injury in fact attributable to Defendants' implementation and enforcement of SAPA. The United States has standing to

challenge state laws that interfere with the federal government's operations and objectives. United States v. Arizona, 703 F. Supp. 2d 980, 1007 (D. Ariz. 2010) (citing Crosby v. Nat'l Foreign Trade Council, 530 U.S. 363, 379-80 & n. 14 (2000); Am. Ins. Ass'n v. Garamendi, 539 U.S. 396, 413 (2003)), aff'd, 641 F.3d 339 (9th Cir. 2011), aff'd in part, 567 U.S. 387 (2012) (federal enforcement undermined by state's enforcement of interfering state legislation)); United States v. Sup. Ct. of N. Mexico, 839 F.3d 888, 899 (10th Cir. 2016) (United States had standing to challenge state rule that "impair[ed] the United States's interest in the effective conduct of federal criminal investigations and prosecutions"). The United States' law enforcement operations have been affected through withdrawals from and/or limitations on cooperation in joint federal-state task forces, restrictions on sharing information, confusion about the validity of federal law in light of SAPA, and discrimination against federal employees and those deputized for federal law enforcement who lawfully enforce federal law.

Based on the complaint and attendant declarations, the United States has a concrete injury, attributable to Defendants' implementation and enforcement of SAPA, that is particularized and actual. Spokeo, Inc. v. Robins, 578 U.S. 330, 339 (2016) (citing Lujan, 504 U.S. at 560). The United States demonstrates injury in fact relative to SAPA's interference with the function of federal firearms regulations and public safety objectives. The injury in fact requirement is satisfied.

b. The United States demonstrates causation.

Defendants argue the United States cannot show causation because SAPA is enforced not by Defendants, but through private civil action. For causation to exist for purposes of standing, "the injury has to be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court." Agred Found. v. U.S. Army Corps of Eng'r, 3 F.4th 1069, 1073 (8th Cir. 2021) (citing Lujan, 504 U.S. at 560).

SAPA requires state and local law enforcement officials to cease enforcement of federal firearms regulations deemed infringements under § 1.420 and imposes a duty on state courts and state law enforcement agencies to protect citizens against the infringements identified. Mo. Rev. Stat. § 1.440. State law enforcement entities have withdrawn personnel from joint task forces and restricted what information can be shared with federal law enforcement agencies. (Docs. ##8-2, 8-3, 8-4). In addition, "any person" can file suit against a law enforcement entity knowingly enforcing § 1.420's "infringements," which includes Missouri's Attorney General on the State's behalf. Mo. Rev. Stat. § 27.060; § 1.020(12). Missouri law otherwise authorizes the Defendants' enforcement of SAPA by other means. Mo. Rev. Stat. § 106.220 (state official may be removed for knowing or willful failure to perform any official act or duty). For these reasons, the United States' injury in fact is fairly traceable to Defendants. The causation requirement for the United States' standing is satisfied.

c. The United States demonstrates redressability.

Defendants argue the United States does not show the "capable of redress" requirement of standing because SAPA is enforced by private individuals.

Redressability means "a favorable decision will likely redress" the injury alleged. United States v. Metro. St. Louis Sewer Dist., 569 F.3d 829, 834 (8th Cir. 2009). "[A] party satisfies the redressability requirement when he shows that a favorable decision will relieve a discrete injury to himself. He need not show that a favorable decision will relieve his every injury." 281 Care Comm. v. Arneson, 638 F.3d 621, 631 (8th Cir. 2011) (citing Minn. Citizens Concerned for Life v. FEC, 113 F.3d 129, 131 (8th Cir. 1997)).

State and local law enforcement personnel are withdrawing from federal joint task forces and refusing to share investigative information based on SAPA. (Docs. ##8-2, 8-3, 8-4). Moreover,

SAPA purports to regulate and/or discriminate against state and local law enforcement officials who are deputized to lawfully enforce federal law. Additionally, and as referenced in the previous section, Defendants may enforce SAPA. "When a statute is challenged as unconstitutional, the proper defendants are the officials whose role it is to administer and enforce the statute." 281 Care, 638 F.3d at 631 (citing Mangual v. Rotger-Sabat, 317 F.3d 45, 58 (1st Cir. 2003)). The United States satisfies the redressability requirement, notwithstanding the SAPA's private cause of action provisions.

For these reasons, the United States has standing for its claims for declaratory and injunctive relief against Defendants. The motion to dismiss for lack of jurisdiction (Doc. # 13) based on standing is denied. The Court considers Defendants' second argument - that the United States lacks a cause of action - in the context of the United States' motion for summary judgment and Defendants' motion to dismiss for failure to state a claim below.

B. The United States' motion for summary judgment (Doc. #8) is granted and Defendants' motion to dismiss under Fed. R. Civ. P. 12(b)(6) (Doc. #16) is denied.

The United States argues there is no genuine issue of material fact and it is entitled to judgment as a matter of law that SAPA is unconstitutional. (Doc. #8). Defendants argue the United States' complaint should be dismissed because SAPA regulates only state actors and not the federal government, and under Printz v. United States, 521 U.S. 898 (1997), Defendants cannot be compelled to enforce a federal regulatory scheme.

Summary judgment is proper if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56; Rafos v. Outboard Marine Corp., 1 F.3d 707, 708 (8th Cir. 1993) (citing Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986)). Because the United States' motion for summary judgment applies a more stringent standard than that applicable to Defendants' motion to dismiss under Fed. R. Civ. P. 12(b)(6), and

because there exist no genuine issues of material fact on this record, disposition of the United States' motion for summary judgment (Doc. #8) is dispositive of Defendants' motion to dismiss for failure to state a claim and the remainder of Defendants' motion to dismiss for lack of subject matter jurisdiction.

UNCONTROVERTED MATERIAL FACTS

In 1934, Congress enacted the National Firearms Act, 26 U.S.C. §§ 5811-22, 5841 ("NFA"). In 1968, Congress enacted the Gun Control Act, 18 U.S.C. §§ 921 – 924 ("GCA"). These regulatory schemes deal with the sale, manufacture, and possession of firearms and ammunition.

The NFA provides for registration and taxation requirements on the manufacture and transfer of certain firearms, including machineguns, certain types of rifles, shotguns, silencers, and "destructive devices," like grenades. The NFA does not regulate most handguns, nor does it prohibit ownership of regulated firearms.

The GCA defines "firearm," to include "(A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device." (Doc. #40 at 9) (citing 18 U.S.C. § 921(a)(3)). The GCA also bans the transfer or possession of machineguns not already lawfully possessed prior to 1986, and the manufacture or sale or transfer of any firearm that is not detectable by "walk-through metal detector," or x-ray inspection commonly used at airports.

The GCA imposes licensing requirements on anyone "engaged in the business of importing, manufacturing, or dealing firearms, or importing or manufacturing ammunition," and requires those involved in these activities, i.e. "Federal Firearms Licensees", to receive a license from the Attorney General and pay certain fees. Id. (citing 18 U.S.C. § 923(a)). Federal Firearms

Licensees ("FFL") must maintain "records of importation, production, shipment, receipt, sale, or other disposition of firearms," and may not transfer a firearm to an unlicensed person unless they complete a Firearms Transaction Record. These records must be available at the FFL's business premises for compliance inspections conducted by the Federal Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF"). FFLs are also required to verify, in the context of an over-the-counter sale of a firearm, the purchaser's identity and conduct a background check using the National Instant Criminal Background Check System ("NICS") administered by the Federal Bureau of Investigation ("FBI"). In addition, FFLs are required to ensure every firearm manufactured or imported is identified by a serial number and mark indicating the firearm's model, as well as the Licensee's name and location. FFLs also must report the theft or loss of any firearm to ATF and local law enforcement and must respond to requests made by the Attorney General made in the course of a criminal investigation relating to the disposition of a firearm.

The GCA also prohibits the possession of firearms by certain categories of individuals, including those who have been convicted of a felony, those who have been convicted of a misdemeanor crime of domestic violence, those who have been dishonorably discharged from the military, noncitizens not lawfully in the United States, unlawful users of controlled substances, and others. (Doc. #40 at 11) (citing 18 U.S.C. § 922(g)).

On June 12, 2021, Governor Parson signed SAPA – the "Second Amendment Preservation Act," – into law. SAPA states as follows.

> **1.410. Citation of law – findings**
> [. . . .]
> 2. The general assembly finds and declares that:
>
> > [. . . .]
> > (5) [. . . .] Although the several states have granted supremacy to laws and treaties made under the powers granted in the Constitution of the United States, such supremacy does not extend to various federal statutes, executive orders, administrative orders, court orders, rules, regulations, or

other actions that collect data or restrict or prohibit the manufacture, ownership, or use of firearms, firearm accessories, or ammunition exclusively within the borders of Missouri; **such statutes, executive orders, administrative orders, court orders, rules, regulations, and other actions exceed the powers granted to the federal government except to the extent they are necessary and proper for governing and regulating the United States Armed Forces or for organizing, arming, and disciplining militia forces actively employed in the service of the United States Armed Forces . . . .**

1.420. Federal laws deemed infringements of United States and Missouri Constitutions

The following federal acts, laws, executive orders, administrative orders, rules, and regulations shall be considered infringements on the people's right to keep and bear arms, as guaranteed by Amendment II of the Constitution of the United States and Article I, Section 23 of the Constitution of Missouri, within the borders of this state including, but not limited to:

(1) Any tax, levy, fee, or stamp imposed on firearms, firearm accessories, or ammunition not common to all other goods and services and that might reasonably be expected to create a chilling effect on the purchase or ownership of those items by law-abiding citizens;

(2) Any registration or tracking of firearms, firearm accessories, or ammunition;

(3) Any registration or tracking of the ownership of firearms, firearm accessories, or ammunition;

(4) Any act forbidding the possession, ownership, use, or transfer of a firearm, firearm accessory, or ammunition by law-abiding citizens; and

(5) Any act ordering the confiscation of firearms, firearm accessories, or ammunition from law-abiding citizens.

1.430. Invalidity of federal laws deemed an infringement

All federal acts, laws, executive orders, administrative orders, rules, and regulations, regardless of whether they were enacted before or after the provisions of sections 1.410 to 1.485, that infringe on the people's right to keep and bear arms as guaranteed by the Second Amendment to the Constitution of the United States and Article I, Section 23 of the Constitution of Missouri shall be invalid to this state, shall not be recognized by this state, shall be specifically rejected by this state, and shall not be enforced by this state.

1.440. Protection of citizens against infringement against right to keep and bear arms

It shall be the duty of the courts and law enforcement agencies of this state to protect the rights of law-abiding citizens to keep and bear arms within the borders of this state and to protect these rights from the infringements defined under section 1.420.

1.450 Enforcement of federal laws that infringe on the right to keep and bear arms prohibited

No entity or person, including any public officer or employee of this state or any political subdivision of this state, shall have the authority to enforce or attempt to enforce any federal acts, laws, executive orders, administrative orders, rules, regulations, statutes, or ordinances infringing on the right to keep and bear arms as described under section 1.420. Nothing in sections 1.410 to 1.480 shall be construed to prohibit Missouri officials from accepting aid from federal officials in an effort to enforce Missouri laws.

1.460. Violations, liability and civil penalty – sovereign immunity not a defense

1. Any political subdivision or law enforcement agency that employs a law enforcement officer who acts knowingly, as defined under section 562.016, to violate the provisions of section 1.450 or otherwise knowingly deprives a citizen of Missouri of the rights or privileges ensured by Amendment II of the Constitution of the United States or Article I, Section 23 of the Constitution of Missouri while acting under the color of any state or federal law shall be liable to the injured party in an action at law, suit in equity, or other proper proceeding for redress, and subject to a civil penalty of fifty thousand dollars per occurrence. Any person injured under this section shall have standing to pursue an action for injunctive relief in the circuit court of the county in which the action allegedly occurred or in the circuit court of Cole County with respect to the actions of such individual. The court shall hold a hearing on the motion for temporary restraining order and preliminary injunction within thirty days of service of the petition.
2. In such actions, the court may award the prevailing party, other than the state of Missouri or any political subdivision of the state, reasonable attorney's fees and costs.
3. Sovereign immunity shall not be an affirmative defense in any action pursuant to this section.

1.470. Employment of certain former federal employees prohibited, civil penalty – standing – no sovereign immunity

1. Any political subdivision or law enforcement agency that knowingly employs an individual acting or who previously acted as an official, agent, employee, or deputy of the government of the United States, or otherwise acted under the color of federal law within the borders of this state, who has knowingly, as defined under section 562.016, after the adoption of this section:
(1) Enforced or attempted to enforce any of the infringements identified in section 1.420; or
(2) Given material aid and support to the efforts of another who enforces or attempts to enforce any of the infringements identified in section 1.420;
shall be subject to a civil penalty of fifty thousand dollars per employee hired by the political subdivision or law enforcement agency. Any person residing in a jurisdiction who believes that an individual has taken action that would violate the provisions of this section shall have standing to pursue an action.

2. Any person residing or conducting business in a jurisdiction who believes that an individual has taken action that would violate the provisions of this section shall have standing to pursue an action for injunctive relief in the circuit court of the county in which the action allegedly occurred or in the circuit court of Cole County with respect to the actions of such individual. The court shall hold a hearing on the motion for a temporary restraining order and preliminary injunction within thirty days of service of the petition.
3. In such actions, the court may award the prevailing party, other than the state of Missouri or any political subdivision of the state, reasonable attorney's fees and costs.
4. Sovereign immunity shall not be an affirmative defense in any action pursuant to this section.

1.480. Definitions – acts not deemed violation
1. For sections. 1.410 to 1.485, the term "law-abiding citizen" shall mean a person who is not otherwise precluded under state law from possessing a firearm and shall not be construed to include anyone who is not legally present in the United States or the state of Missouri.
2. For the purposes of sections 1.410 to 1.480, "material aid and support" shall include voluntarily giving or allowing others to make use of lodging; communications equipment or services, including social media accounts; facilities; weapons; personnel; transportation; clothing; or other physical assets. Material aid and support shall not include giving or allowing the use of medicine or other materials necessary to treat physical injuries, nor shall the term include any assistance provided to help persons escape a serious, present risk of life-threatening injury.
3. It shall not be considered a violation of sections 1.410 to 1.480 to provide material aid to federal officials who are in pursuit of a suspect when there is a demonstrable criminal nexus with another state or country and such suspect is either not a citizen of this state or is not present in this state.
4. It shall not be considered a violation of sections 1.410 to 1.480 to provide material aid to federal prosecution for:
(1) Felony crimes against a person when such prosecution includes weapons violations substantially similar to those found in chapter 570 or1 571 so long as such weapons violations are merely ancillary to such prosecution; or
(2) Class A or class B felony violations substantially similar to those found in chapter 579 when such prosecution includes weapons violations substantially similar to those found in chapter 570 or1 571 so long as such weapons violations are merely ancillary to such prosecution.
5. The provisions of sections 1.410 to 1.485 shall be applicable to offenses occurring on or after August 28, 2021.

1.485. Severability clause
If any provision of sections 1.410 to 1.485 or the application thereof to any person or circumstance is held invalid, such determination shall not affect the provisions or applications of sections 1.410 to 1.485 that may be given effect without the

> invalid provision or application, and the provisions of sections 1.410 to 1.485 are severable.

Mo. Rev. Stat. §§ 1.410 - 1.485 (2021) ("SAPA") (emphasis added).

Federal joint task forces involve state and local law enforcement officers who are deputized as federal law enforcement officers and voluntarily serve alongside federal officials to enforce federal law. 28 U.S.C. §§ 561(f), 566(c); 28 C.F.R. § 0.112(b). ATF relies on joint task forces to investigate and enforce laws relevant to the illegal use, possession, and trafficking of firearms. The United States Marshal Service has three task forces across Missouri that are primarily devoted to the apprehension of fugitives.

After SAPA was enacted, ATF sent an informational letter to federal firearms licensees to "confirm the continuing applicability of existing federal regulations."

SAPA is the subject to two state court lawsuits: City of St. Louis v. State of Missouri, No. 21AC-CC00237 (Circuit Court of Cole County, Missouri) and City of Arnold v. State of Missouri, No. 22JE-cc00010 (Circuit Court of Jefferson County, Missouri). The Federal Government participated as amicus curiae in the City of St Louis, No. SC99290 (Mo.), in which the Missouri Supreme Court heard argument on February 7, 2022.

ANALYSIS

The United States argues it is entitled to summary judgment because SAPA is unconstitutional. First, the United States argues SAPA is unconstitutional because it violates the Supremacy Clause of the Federal Constitution in that its "cornerstone" provision, § 1.420, purports to nullify federal law and/or is preempted by federal law. The United States argues because § 1.420 is non-severable from SAPA's other provisions, SAPA is invalid and unconstitutional in its entirety. Second, the United States argues §§ 1.430 – 1.470 are each independently unconstitutional as violations of the doctrine of intergovernmental immunity.

A. Section 1.420 violates the Supremacy Clause.

The Supremacy Clause provides that the "Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. CONST. art. VI, cl. 2. "By this declaration, the states are prohibited from passing any acts which shall be repugnant to a law of the United States." M'Culloch v. Maryland, 17 U.S. 316, 361 (1819). "The states have no power, by taxation or otherwise, to retard, impede, burden, or in any manner control the operations of the constitutional laws enacted by congress to carry into effect the powers vested in the national government." Id. at 317. Further, "[t]he law of congress is paramount; it cannot be nullified by direct act of any state, nor the scope and effect of its provisions set at naught indirectly." Anderson v. Carkins, 135 U.S. 483, 490 (1890). As such, a state legislature's attempt to "interpos[e]" itself against federal law "is illegal defiance of constitutional authority." United States v. Louisiana, 364 U.S 500, 501 (1960) (citing Bush v. Orleans Parish Sch. Bd., 188 F. Supp. 916, 926 (E.D. La. 1960); Cooper v. Aaron, 358 U.S. 1 (1958)).

SAPA is an unconstitutional "interposit[ion]" against federal law and is designed to be just that. Id. Section 1.410(5) states the Missouri General Assembly's declaration that the Supremacy Clause "does not extend to various federal statutes, executive orders, administrative orders, court orders, rules, regulations, or other actions that collect data or restrict or prohibit the manufacture, ownership, or use of firearms, firearm accessories, or ammunition exclusively within the borders of Missouri . . . ." Mo. Rev. Stat. § 1.410(5). However, the Missouri General Assembly's assertion that the Supremacy Clause does not extend to acts of Congress does not make it so. To the contrary,

"[t]he law of congress is paramount; it cannot be nullified by direct act of any state, nor the scope and effect of its provisions set at naught indirectly." Anderson, 135 U.S. at 490.

The plain language of § 1.420 reiterates and confirms SAPA's unconstitutional design. Section 1.420's introductory language states: "[t]he following federal acts laws, executive orders administrative orders, rules, and regulations shall be considered infringements on the people's right to keep and bear arms, as guaranteed by Amendment II of the Constitution of the United States and [the Missouri Constitution], within the borders of this state . . . ." Mo. Rev. Stat. § 1.420. Section 1.420 then purports to categorize certain enumerated federal regulations set forth in the National Firearms Act and the Gun Control Act as "infringements on the people's right to keep and bear arms, as guaranteed by" the Second Amendment. Yet, notwithstanding § 1.420's recitation of infringements, the National Firearms Act and the Gun Control Act are "presumptively lawful regulatory measures." District of Columbia v. Heller, 554 U.S. 570, 626-27 n.26 (2008); 26 U.S.C. §§ 5811-5822, 5841 (federal firearms licensing, registration, tax requirements); 18 U.S.C. § 922(a)(1)(A), 923(a); 922(g) (federal regulations for manufacture, importation and firearms dealing and imposing licensing, recordkeeping, and marking requirements; limits on possession); see also, United States v. Bena, 664 F.3d 1180, 1184 (8th Cir. 2011); United States v. Joos, 638 F.3d 581, 586 (8th Cir. 2011); United States v. Seay, 620 F.3d 919, 924-25 (8th Cir. 2010); United States v. Fincher, 538 F.3d 868, 873-74 (8th Cir. 2008).

Though § 1.420 purports to invalidate substantive provisions of the NFA and the GCA within Missouri, such an act is invalid under the Supremacy Clause. And, even though Missouri defines certain substantive provisions of the NFA and GCA as "infringements," the regulatory measures are still valid in Missouri through the Supremacy Clause. Thus, to the extent § 1.420 purports to negate the constitutionality or substance of the NFA or GCA, these regulatory schemes

are presumptively lawful, and it is an impermissible nullification attempt that violates the Supremacy Clause.

B. Section 1.420 is preempted.

Section 1.420 provides that certain federal firearms regulations are "infringements on the people's right to keep and bear arms, as guaranteed by Amendment II of the Constitution of the United States and Article I, Section 23 of the Constitution of Missouri, within the borders of this state, including, but not limited to," in summary, (1) taxes or fees on firearms, accessories, or ammunition; (2) registration of firearms, accessories, or ammunition; (3) registration or tracking of ownership of firearms, accessories, or ammunition; (4) bans on possession/ownership/transfer of firearms, accessories, or ammunition by law-abiding citizens; and (5) confiscation of firearms, accessories, or ammunition from law-abiding citizens. Mo. Rev. Stat. § 1.420.

A federal law preempts a state law if the two are in direct conflict. Alliance Ins. Co. v. Wilson, 384 F.3d 547, 551 (8th Cir. 2004). A "direct conflict" occurs "[w]hen compliance with both federal and state regulations is a physical impossibility or when a state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress . . . ." Id. If "Congress enacts a law that imposes restrictions or confers rights on private actors," and "a state law confers rights or imposes restrictions that conflict with federal law," then "the federal law takes precedence and the state law is preempted." Murphy v. Nat'l Coll. Athletic Ass'n, 138 S. Ct. 1461, 1480 (2018).

Under the uncontroverted facts, the NFA sets forth taxation requirements on the manufacture and transfer of certain firearms. 26 U.S.C. §§ 5811, 5821. Section 1.420(1) states "[a]ny tax, levy, feel or stamp imposed on firearms, firearm accessories, or ammunition . . . that might reasonably be expected to create a chilling effect on the purchase or ownership of those

items by law-abiding citizens," is an "infringement on the people's right to keep and bear arms, as guaranteed by Amendment II of the Constitution of the United States . . . within the borders of [Missouri]." However, that Missouri states that the taxation requirements "create a chilling effect . . ." is immaterial where Congress has lawfully imposed the requirements. Further, such a statement stands as an obstacle to the full purposes and objectives of federal firearms regulatory measures because it creates confusion regarding a Missouri citizen's obligation to comply with the taxation requirements of the NFA. As such, § 1.420 is preempted.

Under the uncontroverted facts, the NFA provides for the registration and tracking of firearms and their possession. 26 U.S.C. § 5841(a). The GCA imposes other requirements on those engaged in the business of dealing or manufacturing or importing firearms or ammunition. These Federal Firearms Licensees (FFL) must receive a license from the Attorney General and pay certain fees. Each FFL is required to maintain "records of importation, production, shipment, receipt, sale, or other disposition of firearms," and may not transfer a firearm to an unlicensed person without completing a Firearms Transaction Record. FFLs must also conduct background checks using the National Instant Criminal Background Check System and verify a purchaser's identify for an over-the-counter sale of a firearm. Moreover, FFLS must ensure each firearm manufactured and imported must be identified by serial number and the licensees' identifying mark.

However, §§ 1.420(2) and 1.420(3) state "[a]ny registration or tracking of firearms, firearm accessories, or ammunition," and/or "[a]ny registration or tracking of the ownership of firearms, firearm accessories or ammunition," is an "infringement on the people's right to keep and bear arms, as guaranteed by Amendment II of the Constitution of the United States . . . within the borders of [Missouri]." Sections 1.420(2) and 1.420(3) create confusion regarding registration of

firearms by purporting to invalidate federal registration and tracking requirements. The logical implication is that Missouri citizens need not comply with federal licensing and registration requirements "within the borders of [Missouri]." Since Missouri citizens must comply with federal registration and licensing requirements for firearms notwithstanding SAPA's definition of infringements, §§ 1.420(2) and 1.420(3) stand as obstacles to the full purposes and objectives of federal firearms regulatory measures and are preempted.

Moreover, the GCA also prohibits possession of firearms by certain categories of individuals, including those who have been convicted of a felony, those who have been convicted of a misdemeanor crime of domestic violence, those who have been dishonorably discharged from the military, noncitizens not lawfully in the United States, unlawful users of controlled substances, and others. 18 U.S.C. § 922(g). Sections 1.420(4) and 1.420(5) state "[a]ny act forbidding the possession, ownership, use, or transfer of a firearm, firearm accessory, or ammunition by law-abiding citizens" and/or "[a]ny act ordering the confiscation of firearms, firearm accessories, or ammunition from law-abiding citizens is an "infringement on the people's right to keep and bear arms, as guaranteed by Amendment II of the Constitution of the United States . . . within the borders of [Missouri]." As used in these provisions, "law-abiding citizen" is defined as "a person who is not otherwise precluded under state law from possessing a firearm and shall not be construed to include anyone who is not legally present in the United States or in the state of Missouri." Mo. Rev. Stat. § 1.480. Sections 1.420(4) and (5) refer to as "infringements" limits on who may possess a firearm, as those limits are set forth in the GCA. SAPA's definition of "law-abiding citizen" expands who may lawfully possess a firearm within the state of Missouri and/or whose firearms, firearm accessories, or ammunition may be subject to confiscation. Sections 1.420(4) and 1.420(5) create confusion about the lawful possession, ownership, use, transfer, or

confiscation of firearms within Missouri by purporting to reduce the scope of federal regulations pertaining to the possession, ownership, use, transfer, or confiscation of firearms, with which federal regulations Missouri citizens must comply. By attempting to alter the definition of a "law-abiding citizen" who may possess or own or transfer or use a firearm within Missouri, §§ 1.420(4) and 1.420(5) conflict with the GCA's definition of who may possess or own or transfer or use a firearm within Missouri, and as such, §§ 1.420(4) and 1.420(5) stand as obstacles to the full purposes and objectives of federal firearms regulatory measures and are preempted. For all of these reasons, § 1.420 is preempted and unconstitutional on its face.

C. SAPA is unconstitutional in its entirety.

The next issue is whether the unconstitutionality of § 1.420 renders SAPA unconstitutional in its entirety because the other provisions are "so essentially and inseparably connected with, and so dependent upon" § 1.420 "that it cannot be presumed the legislature would have enacted the valid provisions without the void one." Priorities USA v. Missouri, 591 S.W.3d 448, 456 (Mo. 2020).

The parties agree that Missouri law governs whether SAPA is severable. The Missouri Supreme Court "employs a two-part test to determine whether valid parts of a statute can be upheld despite the statute's unconstitutional parts." Id. (citing Dodson v. Ferrara, 491 S.W.3d 542, 558 (Mo. 2016)). First, the Court asks "whether, after separating the invalid portions, the remaining portions are in all respects complete and susceptible of constitutional enforcement." Id. Second, the Court asks "whether 'the remaining statute is one that the legislature would have enacted if it had known that the rescinded portion was invalid.'" Id.

Here, SAPA fails Missouri's severability test. First, even if § 1.420 is severed, the remaining portions of the statute cannot be said to be "in all respects complete and susceptible to

constitutional enforcement." Priorities USA, 591 S.W.3d at 456. Because § 1.420 defines categorizes certain "federal acts, laws, executive orders, administrative orders, rules, and regulations" as "infringements," SAPA's other provisions are rendered meaningless without this definition.

For example, § 1.430 states that such infringements are invalid as applied to the State of Missouri, §1.440 imbues courts and law enforcement agencies with a duty to protect the citizens of Missouri from such infringements, and § 1.450 specifically prohibits Missouri state actors from enforcing any federal acts, laws, executive orders, etc. that have been deemed infringements by the State of Missouri. Therefore, since each provision of SAPA relies on the definition of an "infringement" as it is defined under § 1.420, SAPA's remaining subsections are "essentially and inseparably connected with, and . . . dependent upon" § 1.420. Id.

Given the governing framework set forth in § 1.420, SAPA fails Missouri's severability test because it cannot be said that the legislature would have enacted SAPA had it known that § 1.420 was unconstitutionally invalid. To say otherwise would suggest the Missouri General Assembly meant to enact a law wherein courts and law enforcement agencies have a duty to protect citizens from "infringements" and citizens of Missouri need not recognize such "infringements"—without actually knowing what an infringement is. Such a result would create a material ambiguity in the statute and lead to absurd results. Missouri v. Nash, 339 S.W.3d 500, 508 (Mo. 2011) ("[s]tatutes cannot be interpreted in ways that yield unreasonable or absurd results . . . ."). Moreover, without § 1.420, SAPA would have no practical or legal effect and the Missouri General Assembly would have had no basis to enact SAPA's other provisions. Therefore, §1.420 is non-severable and SAPA unconstitutional in its entirety.

D. Sections 1.430 – 1.470 violate the doctrine of intergovernmental immunity.

Moreover, SAPA's other substantive provisions are unconstitutional independent of § 1.420 because they violate the doctrine of intergovernmental immunity. "The Constitution's Supremacy Clause generally immunizes the Federal Government from state laws that directly regulate or discriminate against it." United States v. Washington, 596 U.S. – (June 21, 2022) (citing South Carolina v. Baker, 485 U.S. 505, 523 (1988)). The doctrine of intergovernmental immunity "prohibit[s] state laws that *either* 'regulate the United States directly or discriminate against the Federal Government or those with whom it deals (e.g. contractors).'" Id. (emphasis in original) (citing North Dakota v. United States, 495 U.S. 423, 435 (1990)). Additionally, "[a] state law discriminates against the Federal Government" in violation of the doctrine of intergovernmental immunity if the state singles out the Federal Government "for less favorable treatment, or if it regulates [the Federal Government] unfavorably on some basis related to their governmental 'status.'" Id. (citing Washington v. United States, 460 U.S. 536, 546 (1983); North Dakota, 495 U.S. at 438)).

Section 1.430 provides that all federal laws and acts that infringe on the people's right to keep and bear arms under the Second Amendment are invalid in Missouri, are not recognized by Missouri, and are rejected by Missouri. At best, this statute causes confusion among state law enforcement officials who are deputized for federal task force operations, and at worst, is unconstitutional on its face. While Missouri cannot be compelled to assist in the enforcement of federal regulations within the state, it may not regulate federal law enforcement or otherwise interfere with its operations. By declaring federal firearms regulations invalid as to the state, § 1.430 violates intergovernmental immunity on its face.

Section 1.440 imposes a duty on Missouri courts and law enforcement agencies to protect against infringements as defined under § 1.420. In creating an affirmative duty to protect against infringements, § 1.440 effectively imposes an affirmative duty to effectuate an obstacle to federal firearms enforcement within the state. In imposing a duty on courts and state law enforcement to obstruct the enforcement of federal firearms regulations in Missouri, § 1.440 violates intergovernmental immunity. Tennessee v. Davis, 100 U.S. 257, 263 (1879) ("No State government can exclude [the Federal Government] from the exercise of any authority conferred upon it by the Constitution, [or] obstruct its authorized officers against its will . . . .").

Section 1.450 regulates the United States directly in violation of the doctrine of intergovernmental immunity. Section 1.450 states that "[n]o entity . . . shall have the authority to enforce or attempt to enforce any federal acts . . ." that are deemed infringements under § 1.420. Though Defendants argue SAPA does not regulate the United States or federal law enforcement directly, this argument is contrary to § 1.450's plain language.

Finally, §§ 1.460 and 1.470 are each independently invalid as discriminatory against federal authority in violation of the doctrine of intergovernmental immunity. Section 1.460 imposes a monetary penalty through civil enforcement action against any political subdivision or law enforcement agency that employs an officer who knowingly violates § 1.450 while acting under color of federal law – that is, any local law enforcement official who assists in federal firearms regulatory enforcement in a deputized capacity. Section 1.470 imposes a monetary penalty through civil enforcement action against any political subdivision or law enforcement agency that employs an officer who formerly enforced the infringements identified in § 1.420 – that is, certain federal firearms regulations – or, an officer who has given material aid and support to others engaged in the enforcement of the infringements identified in § 1.420 – that is, federal

law enforcement. The exposure to monetary penalties set forth in § 1.460 and 1.470 arise from federally deputized state law enforcement officials' enforcement of federal firearm regulations. Moreover, these enforcement schemes are likely to discourage federal law enforcement recruitment efforts. For these reasons, § 1.460 and § 1.470 violate intergovernmental immunity and are invalid. Davis, 100 U.S. 25 at 263. Therefore, §§ 1.430-1.470 are each independently unconstitutional.

E. SAPA is unconstitutional in its entirety.

The unconstitutionality of §§ 1.460 and 1.470 likewise renders SAPA unconstitutional as non-severable. Even assuming SAPA's other provisions are susceptible of constitutional enforcement, which they are not, there is no basis to conclude the Missouri General Assembly would have enacted SAPA without the civil enforcement mechanisms set forth in §§ 1.460 and 1.470. Priorities USA, 591 S.W.3d at 456 (two-part severability test asks first, whether after separating out the unconstitutional provisions, the remaining portions are susceptible of constitutional enforcement and second, whether without the unconstitutional provision, the legislature would have nonetheless enacted the law). Without §§ 1.460 and/or 1.470, SAPA has no practical or legal effect. The Court thus concludes §§ 1.460 and/or 1.470 are non-severable, rendering SAPA is unconstitutional in its entirety.

SAPA's practical effects are counterintuitive to its stated purpose. While purporting to protect citizens, SAPA exposes citizens to greater harm by interfering with the Federal Government's ability to enforce lawfully enacted firearms regulations designed by Congress for the purpose of protecting citizens within the limits of the Constitution. Accordingly, it is hereby

ORDERED the United States' motion for summary judgment (Doc. #8) is GRANTED. It is further

ORDERED Defendants' motions to dismiss (Docs. #13 & #15) are DENIED. It is further

ORDERED SAPA is invalidated as unconstitutional in its entirety as violative of the Supremacy Clause. H.B. 85 is invalid, null, void, and of no effect. State and local law enforcement officials in Missouri may lawfully participate in joint federal task forces, assist in the investigation and enforcement of federal firearm crimes, and fully share information with the Federal Government without fear of H.B. 85's penalties. The States of Missouri and its officers, agents, and employees and any others in active concert with such individuals are prohibited from any and all implementation and enforcement of H.B. 85. It is further

ORDERED the United States' request for costs is GRANTED.

IT IS SO ORDERED.

DATE: March 6, 2023

/s/ Brian C. Wimes
JUDGE BRIAN C. WIMES
UNITED STATES DISTRICT COURT

643 S.W.3d 295
Supreme Court of Missouri,
en banc.

CITY OF ST. LOUIS; St. Louis County;
and Jackson County, Appellants,
v.
STATE of Missouri; and Eric Schmitt,
Attorney General of Missouri, Respondents.

No. SC 99290
|
Opinion issued April 26, 2022

Synopsis

Background: City and counties filed declaratory judgment action against state, seeking declaration that Second Amendment Protection Act (SAPA) was unconstitutional and requesting injunctive relief. State moved for judgment on pleadings, and the Circuit Court, Cole County, Daniel R. Green, J., sustained the motion. City and counties appealed.

Holdings: The Supreme Court, Draper, J., held that:

[1] plaintiffs lacked adequate remedy at law in which to adjudicate their specific constitutional challenges, but

[2] Supreme Court would decline to invoke rule governing disposition on appeal and enter judgment on merits.

Reversed and remanded.

Fischer, J., filed dissenting opinion.

Procedural Posture(s): On Appeal; Motion for Judgment on the Pleadings.

West Headnotes (12)

[1] Appeal and Error Judgment on the pleadings

The Supreme Court reviews the trial court's grant of judgment on the pleadings de novo.

[2] Appeal and Error Judgment on the pleadings

When reviewing the trial court's ruling on a motion for judgment on the pleadings, the Supreme Court must determine whether the state is entitled to judgment as a matter of law on the face of the pleadings.

1 Case that cites this headnote

[3] Declaratory Judgment Motions in general

The Supreme Court must treat plaintiffs' well-pleaded facts from their declaratory judgment petition as admitted for purposes of the state's motion for judgment on the pleadings.

[4] Appeal and Error Verdict, Findings, Sufficiency of Evidence, and Judgment

The Supreme Court will affirm the judgment if it is supported by any theory, regardless of whether the reasons advanced by the trial court are wrong or not sufficient.

[5] Declaratory Judgment Adequacy of other remedy

City and counties lacked adequate remedy at law in which to adjudicate their specific constitutional challenges, in proceeding on their declaratory judgment action against state seeking declaration that Second Amendment Protection Act (SAPA) was unconstitutional and requesting injunctive relief, though state argued pending lawsuits against plaintiffs provided them with opportunities to assert their constitutional challenges; plaintiffs were not required to subject themselves to multiple, individual suits to assert their constitutional challenges, and lawsuits likely would not provide plaintiffs opportunity to adjudicate their specific constitutional claims due to their procedural posture and thus did not provide plaintiffs with adequate remedy of law.

U.S. Const. Amend. 2; Mo. Ann. Stat. § 1.410 et seq.

[6] **Declaratory Judgment** Right to declaratory relief in general

The interest of being free from the constraints of an unconstitutional law is an interest that is entitled to legal protection in the form of a declaratory judgment.

[7] **Declaratory Judgment** Necessity, utility and propriety

Declaratory Judgment Adequacy of other remedy

Declaratory Judgment Nature and elements in general

A declaratory judgment provides guidance to the parties, declaring their rights and obligations or otherwise governing their relationship, and generally may be granted when a court is presented with: (1) a justiciable controversy that presents a real, substantial, presently-existing controversy admitting of specific relief, as distinguished from an advisory decree upon a purely hypothetical situation; (2) a plaintiff with a legally protectable interest at stake, consisting of a pecuniary or personal interest directly at issue and subject to immediate or prospective consequential relief; (3) a controversy ripe for judicial determination; and (4) an inadequate remedy at law.

[8] **Declaratory Judgment** Adequacy of other remedy

The lack of an adequate remedy at law is a prerequisite to relief via declaratory judgment.

1 Case that cites this headnote

[9] **Declaratory Judgment** Pendency of other action

When an alternative remedy is a pending suit, there is even greater justification to apply the rule against allowing declaratory judgment actions.

[10] **Declaratory Judgment** Validity of statutes and proposed bills

Parties need not subject themselves to a multiplicity of suits or litigation or await the imposition of penalties under an unconstitutional enactment in order to assert their constitutional claim for an injunction; once the gun has been cocked and aimed and the finger is on the trigger, it is not necessary to wait until the bullet strikes to invoke the Declaratory Judgment Act. Mo. Ann. Stat. § 527.010 et seq.

[11] **Declaratory Judgment** Declaratory relief

Following determination that city and counties had no adequate remedy at law other than to pursue declaratory judgment action, Supreme Court would decline to invoke rule governing disposition on appeal and enter judgment on merits, in proceeding on plaintiffs' declaratory judgment action against state seeking declaration that Second Amendment Protection Act (SAPA) was unconstitutional and requesting injunctive relief; trial court had not been afforded any opportunity to review merits of plaintiffs' constitutional challenges or their claims for injunctive relief, and plaintiffs conceded they had not filed dispositive motion seeking declaration SAPA was unconstitutional. U.S. Const. Amend. 2; Mo. Ann. Stat. § 1.410 et seq.; Mo. Sup. Ct. R. 84.14.

[12] **Declaratory Judgment** Declaratory relief

When there are no disputed facts, and the issue is a purely legal one, the court reviewing a declaratory judgment action will declare the rights and duties of the parties.

***296 APPEAL FROM THE CIRCUIT COURT OF COLE COUNTY**, The Honorable Daniel R. Green, Judge

Attorneys and Law Firms

The city was represented by Michael A. Garvin and Robert H. Dierker of the city counselor's office in St. Louis, 314) 622-3361.

St. Louis County was represented by Mary L. Reitz of the St. Louis County counselor's office in Clayton, (314) 615-7042.

Jackson County was represented by Dawn J. Diel of the Jackson County counselor's office in Kansas City, (816) 881-3811.

The state and attorney general were represented by D. John Sauer and Jesus A. Osete of the attorney general's office in Jefferson City, (573) 751-3321.

Opinion

GEORGE W. DRAPER III, Judge

The City of St. Louis, St. Louis County, and Jackson County (hereinafter and collectively, "Plaintiffs") filed a declaratory judgment action seeking a declaration that the Second Amendment Protection Act ***297** (hereinafter "SAPA"), codified in sections 1.410 through 1.485,[1] is unconstitutional and requesting injunctive relief. The state moved for judgment on the pleadings, alleging Plaintiffs had adequate remedies at law rendering a declaratory judgment improper and, alternatively, defending SAPA's constitutional validity. The circuit court sustained the state's motion for judgment on the pleadings, finding Plaintiffs had an adequate remedy at law because multiple, individual lawsuits are pending in which Plaintiffs could assert their constitutional challenges. Plaintiffs appealed to this Court.[2]

This Court holds Plaintiffs met their burden of demonstrating they are entitled to proceed with a declaratory judgment action because they lack an adequate remedy at law in which to adjudicate their specific constitutional challenges. Because Plaintiffs failed to file a dispositive pleading and the circuit court did not have the opportunity to adjudicate their constitutional challenges or claims for injunctive relief in the first instance, this Court declines to enter judgment pursuant to Rule 84.14. The circuit court's judgment is reversed, and the cause is remanded for further proceedings consistent with this opinion.

Factual and Procedural Background

In 2021, the General Assembly passed House Bills Nos. 85 and 310, collectively known as SAPA, which repealed section 1.320, RSMo 2016, and enacted "in lieu thereof nine new sections relating to the sole purpose of adding additional protections to the right to bear arms, with penalty provisions and an emergency clause." 2021 Mo. Legis. Serv. H.B. 85 & 310. These provisions were codified in sections 1.410 through 1.485.

SAPA's first four sections contain legislative findings and declarations. In particular, section 1.410 contains ten legislative findings and declarations concerning the relationship between the federal government and its federal acts, laws, executive orders, administrative orders, rules, and regulations (hereinafter and collectively, "federal gun laws") and the state as they impact Missouri's law-abiding citizens' right to keep and bear arms. Section 1.420 declares certain federal gun laws "shall be considered infringements on the people's right to keep and bear arms" in Missouri. Section 1.430 states all federal gun laws "that infringe upon the people's right to keep and bear arms ... shall not be recognized by this state, shall be specifically rejected by this state, and shall not be enforced by this state." Section 1.440 directs Missouri courts and law enforcement agencies to "protect the rights of law-abiding citizens to keep and bear arms" within Missouri "and to protect these rights from infringement as defined under section 1.420."

SAPA's five remaining sections comprise the substantive provisions to enforce these legislative declarations. Section 1.450 removes from Missouri entities, persons, public officers, state employees, and political subdivisions "the authority to enforce or attempt to enforce any" federal gun law "infringing on the right to keep and bear arms as described under section 1.420." However, nothing in SAPA "shall be construed to prohibit Missouri officials from accepting aid from federal officials in an effort to enforce Missouri laws." *Id.* Sections 1.460 and 1.470 impose civil liability on state political subdivisions and law enforcement ***298** agencies that employ individuals who knowingly violate "section 1.450 or otherwise knowingly deprive[ ]" Missouri citizens of their rights to keep and bear arms. Specifically, these actors "shall be liable to the injured party in an action at law, suit in equity, or other proper proceeding for redress, and subject to a civil penalty of fifty thousand dollars per occurrence." Section 1.460.1. Moreover, any state "political subdivision or law

enforcement agency that knowingly employs an individual acting or who previously acted as an official, agent, employee, or deputy of the government of the United States, or otherwise acted under the color of federal law within [Missouri], who has knowingly" either "[e]nforced or attempted to enforce any of the infringements identified in section 1.420" or "[g]iven material aid and support to the efforts of another who enforces or attempts to enforce any of the infringements identified in section 1.420" is likewise "subject to a civil penalty of fifty thousand dollars per employee hired by the political subdivision or law enforcement agency." Section 1.470.1(1)-(2). Section 1.480.1 defines a "law abiding citizen." Section 1.480.2 sets forth what actions constitute "material aid and support." Subsections (3) and (4) of section 1.480 enumerate exceptions in which providing material aid and support will not constitute a SAPA violation. Section 1.480.5 provides SAPA "shall be applicable to offenses occurring on or after August 28, 2021." Section 1.485 contains a severability clause.

In June 2021, shortly after the governor signed SAPA into law, the City of St. Louis and St. Louis County filed a declaratory judgment action seeking to declare SAPA unconstitutional and moved for a preliminary injunction to prevent SAPA from being enforced while the litigation was pending. The declaratory judgment petition subsequently was amended to add Jackson County as an additional plaintiff. Plaintiffs' petition alleged SAPA infringed upon rights guaranteed by the state and federal constitutions, curtailed law enforcement officers' ability to investigate, apprehend, and prosecute criminals: and violated the United States Supremacy Clause. The petition further claimed SAPA violated the Missouri Constitution because it: usurped the power and authority granted to charter cities and counties; did not having a single subject, clear title, or original purpose; created a special law; and infringed upon the separation of powers. The petition stated, because SAPA did not identify specific federal gun laws it deemed unconstitutional, Plaintiffs "were in doubt concerning their rights, duties, and liabilities" under SAPA regarding which federal gun laws could not be enforced. Because sections 1.420 and 1.450 were vague and indefinite, Plaintiffs maintained they "were in doubt concerning their potential liability" under sections 1.460 and 1.470. Plaintiffs alleged, because they employed and continued to employ law enforcement officers who have or will undertake to enforce federal gun laws, they were at risk for civil penalties. Plaintiffs' petition set forth instances in which SAPA enforcement would be "almost assuredly disastrous" with respect to participating in national criminal background and integrated ballistic databases, working with the federal government on joint task forces and through cooperative agreements, receiving federal funding, training, and equipment, and allowing state law enforcement officers to testify in federal court involving federal firearms offenses. Plaintiffs' petition concluded by seeking a declaration SAPA was unconstitutional and requesting injunctive relief preventing the implementation, enforcement, or application of the unconstitutional statutes. The parties agreed to continue the preliminary injunction hearing and consolidate it with a trial on the merits ***299** because the civil penalties for specific actions would not take effect until August 28, 2021.

The state filed its answer and affirmative defenses, alleging Plaintiffs failed to plead and prove a justiciable controversy ripe for adjudication existed in that they failed to identify any attempt by the state to enforce or threaten to enforce SAPA or demonstrate a concrete dispute in which SAPA affected Plaintiffs' operations. The state further alleged SAPA was constitutional.

In August 2021, the City of St. Louis renewed its motion for a preliminary injunction, in which St. Louis County and Jackson County joined, and filed memoranda in support. In their renewed motion, Plaintiffs alleged they were parties to several task forces with federal law enforcement agencies. As part of that participation, Plaintiffs' law enforcement officers regularly participated with federal officers in investigations and arrests involving federal gun law violations and are deputized as federal law enforcement officers for that purpose. Plaintiffs stated they receive federal funds for training, equipment, and overtime pay, along with use of federal equipment, vehicles, and databases. Plaintiffs alleged they were at risk of incurring civil penalties under SAPA for participating in these activities, among other things, and sought to enjoin SAPA enforcement while the litigation was pending. The state opposed the preliminary injunction and filed a motion for judgment on the pleadings, reiterating that Plaintiffs failed to plead and prove a justiciable controversy ripe for adjudication existed. The state further argued Plaintiffs had an adequate remedy at law in that they could assert their constitutional claims as affirmative defenses in any SAPA enforcement action then pending against Plaintiffs (hereinafter, "pending lawsuits"). The state alternatively contended, even if Plaintiffs had no adequate remedy at law, the state was entitled to judgment on the pleadings because SAPA is constitutional.

The circuit court held a hearing on both motions on the same day. The state admitted there was "substantial overlap between the two motions" and suggested they be argued simultaneously, which occurred. [3] The circuit court sustained the state's motion for judgment on the pleadings, finding the Plaintiffs had an adequate remedy at law because they could litigate their constitutional challenges in the pending lawsuits. Plaintiffs appeal, raising five points.

Standard of Review

[1] **[2]** **[3]** **[4]** "This Court reviews the circuit court's grant of judgment on the pleadings *de novo*." *Gross v. Parson*, 624 S.W.3d 877, 883 (Mo. banc 2021). When reviewing the circuit court's ruling, this Court must determine whether the state is entitled to judgment as a matter of law on the face of the pleadings. *Id.* This Court must treat Plaintiffs' well-pleaded facts from their declaratory judgment petition as admitted for purposes of the state's motion. *Woods v. Mo. Dep't of Corr.*, 595 S.W.3d 504, 505 (Mo. banc 2020). "This Court will affirm the judgment if it is supported by any theory, 'regardless of whether the reasons ***300** advanced by the [circuit] court are wrong or not sufficient.' " *Gross*, 624 S.W.3d at 883 (alteration in original) (quoting *Rouner v. Wise*, 446 S.W.3d 242, 249 (Mo. 2014)).

Declaratory Judgment Action Challenging SAPA's Constitutional Validity

[5] In their first point, Plaintiffs argue the circuit court erred in sustaining the state's motion for judgment on the pleadings because they demonstrated the requisite lack of adequate remedy and likelihood of irreparable harm warranting declaratory judgment and injunctive relief. Plaintiffs argue they cannot obtain complete relief by raising their constitutional claims challenging SAPA's validity in the individual SAPA enforcement actions currently pending. Plaintiffs allege being compelled to defend multiple lawsuits is the very reason declaratory and injunctive relief is warranted.

[6] **[7]** The Declaratory Judgment Act is "remedial" in that "its purpose is to settle and afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations." Section 527.120, RSMo 2016; *see also Planned Parenthood of Kan. v. Nixon*, 220 S.W.3d 732, 738 (Mo. banc 2007). "The interest of being 'free from the constraints of an unconstitutional law' is an interest that 'is entitled to legal protection.' " *Rebman v. Parson*, 576 S.W.3d 605, 609 (Mo. banc 2019) (quoting *Mo. Alliance for Retired Ams. v. Dep't of Labor & Indus. Relations*, 277 S.W.3d 670, 677 (Mo. banc 2009)). Hence, "[a] declaratory judgment action has been found to be a proper action to challenge the constitutional validity of a criminal statute or ordinance." *Alpert v. State*, 543 S.W.3d 589, 592 (Mo. banc 2018) (quoting *Tupper v. City of St. Louis*, 468 S.W.3d 360, 368 (Mo. banc 2015)).

> A declaratory judgment provides guidance to the parties, declaring their rights and obligations or otherwise governing their relationship ... and generally may be granted when a court is presented with: (1) a justiciable controversy that presents a real, substantial, presently-existing controversy admitting of specific relief, as distinguished from an advisory decree upon a purely hypothetical situation; (2) a plaintiff with a legally protectable interest at stake, consisting of a pecuniary or personal interest directly at issue and subject to immediate or prospective consequential relief; (3) a controversy ripe for judicial determination; and (4) an inadequate remedy at law.

Gurley v. Mo. Bd. of Private Investigator Examiners, 361 S.W.3d 406 (Mo. banc 2012) (quoting *City of Lake Saint Louis v. City of O'Fallon*, 324 S.W.3d 756, 760 (Mo. banc 2010)).

The state's motion for judgment on the pleadings focused on whether Plaintiffs pleaded a justiciable controversy ripe for adjudication and whether Plaintiffs had an inadequate remedy at law. The state first argued Plaintiffs failed to plead a justiciable controversy ripe for adjudication because they failed to identify any attempt by the state to enforce or threaten to enforce SAPA. "This Court repeatedly has rejected the notion a person must violate the law to create a ripe controversy." *Alpert*, 543 S.W.3d at 594. Likewise, this Court has held pre-enforcement actions to assert constitutional

claims present a justiciable controversy ripe for adjudication. For example, in *Nicolai v. City of St. Louis*, 762 S.W.2d 423, 424 (Mo. banc 1988), a cat owner brought a declaratory judgment action disputing the authority of the city to tax his premises as a cat kennel prior to being cited with a violation. The circuit court dismissed his action for failure to state a claim upon which relief could be granted and for failing to exhaust administrative ***301** remedies, and the cat owner appealed. *Id.* This Court rejected the city's argument the cat owner could raise his constitutional challenge as a defense in a subsequent criminal prosecution. *Id.* at 425. This Court explained the claim was "ripe for judicial resolution, and there was no need for him to await criminal prosecution before seeking a determination of his rights." *Id.*; *see also Alpert*, 543 S.W.3d at 595 (holding the plaintiff's pre-enforcement constitutional challenge to a statute that precluded him from obtaining a federal firearms license and possessing firearms was ripe even though the defense could be raised in a subsequent criminal prosecution); *Planned Parenthood*, 220 S.W.3d at 738 (holding the plaintiffs' constitutional claims were ripe even though neither the attorney general nor the state had attempted to enforce the statute); *Bldg. Owners & Managers Ass'n of Metro. St. Louis, Inc. v. City of St. Louis, Mo.*, 341 S.W.3d 143, 149 (Mo. App. E.D. 2011) (finding a pre-enforcement challenge was ripe even though the plaintiffs would be subject to criminal penalties if they violated the ordinance's provisions); *Tupper*, 468 S.W.3d at 370 (stating the plaintiffs' challenge to the city's red light camera ordinance was ripe despite neither plaintiff facing prosecution at the time the challenge was raised).

The state next argued Plaintiffs did not demonstrate the dispute was immediate and concrete. This assertion is belied by the fact Plaintiffs currently are defending themselves in the pending lawsuits, hence demonstrating an immediate and concrete dispute. Finally, the state argued Plaintiffs have an adequate remedy at law. The state contended Plaintiffs can assert their constitutional claims as a defense to any SAPA enforcement action, including the five pending lawsuits. The state maintains the pending lawsuits provide Plaintiffs with more opportunities to assert their constitutional challenges and notes Plaintiffs have raised these challenges therein. Plaintiffs contend the pending lawsuits do not afford them the opportunity to assert their specific constitutional challenges and could subject them to conflicting judgments. Both parties asked this Court to take judicial notice of the pending lawsuits to resolve this issue.

[8] **[9]** **[10]** "The lack of an adequate remedy at law is a prerequisite to relief via declaratory judgment." *City of Kan. City, Mo. v. Chastain*, 420 S.W.3d 550, 555 (Mo. banc 2014). This Court generally recognizes when an "alternative remedy is a pending suit, there is even greater justification to apply the rule against allowing declaratory judgment actions." *Schaefer v. Koster*, 342 S.W.3d 299, 300 (Mo. banc 2011) (quoting *Am. Family Mut. Ins. Co. v. Nigl*, 123 S.W.3d 297, 302 (Mo. App. E.D. 2003)). However,

> [p]arties need not subject themselves to a multiplicity of suits or litigation or await the imposition of penalties under an unconstitutional enactment in order to assert their constitutional claim for an injunction .... Once the gun has been cocked and aimed and the finger is on the trigger, it is not necessary to wait until the bullet strikes to invoke the Declaratory Judgment Act.

Alpert, 543 S.W.3d at 595 (alteration in original) (quoting *Planned Parenthood*, 220 S.W.3d at 739).

Plaintiffs need not subject themselves to multiple, individual suits to assert their constitutional challenges. Moreover, a cursory review of the pending lawsuits demonstrate they were either filed before SAPA's effective enforcement date of August ***302** 28, 2021,[4] or filed after August 28, 2021, but stating the alleged conduct upon which the SAPA violation is premised occurred before August 28, 2021.[5] Noting these facts from the face of the pleadings does not constitute an opinion by this Court about the merits of those pending lawsuits; however, they likely will not provide Plaintiffs an opportunity to adjudicate their specific constitutional claims due to their procedural posture and, therefore, do not provide Plaintiffs with an adequate remedy at law.[6] Accordingly, this Court holds the circuit court erred in entering judgment on the pleadings in the state's favor because Plaintiffs lack an adequate remedy at law in which to adjudicate their specific constitutional challenges.

Although the dissenting opinion asserts Plaintiffs have an adequate remedy at law because nothing bars them from raising their constitutional claims as affirmative defenses in

any pending suit or in the future, it fails to recognize or distinguish this Court's precedent holding a party need not face a multiplicity of lawsuits or wait for an enforcement action to be initiated before seeking a declaration of rights. Further, the dissenting opinion relies on Judge Wilson's dissenting opinion in *Alpert*, which quoted *Harris v. State Bank & Trust Company of Wellston*, 484 S.W.2d 177, 178-79 (Mo. 1972). *Harris* stated the declaratory judgment act "should be used with caution. And except in exceptional circumstances plainly appearing, it is not to be used and applied where an adequate remedy already exists." *Id.* Just as the principal opinion noted in *Alpert*, 543 S.W.3d at 595 n.6, and this Court must reiterate again today, the dissenting opinion's reliance on *Harris* is misplaced because *Harris* did not present a constitutional challenge and *Harris*' "exceptional circumstances plainly appearing" test has not been cited or relied upon by this Court since *Harris* was decided fifty years ago. This Court declined to apply the "exceptional circumstances plainly appearing test" in *Alpert*, and neither the parties nor the dissenting opinion provide any reason to change course four years later. Similarly, the dissenting opinion here echoes Judge Wilson's *Alpert* dissenting opinion characterizing this Court's long line of precedent cited herein as "lax" only because there is no discernable ground upon which to distinguish those holdings to support its position. Rather than being "lax," the Court in *Alpert* and here applied valid, binding precedent as required by the doctrine of *stare decisis*.

Entering Judgment Pursuant to Rule 84.14

Because this Court determined Plaintiffs have no adequate remedy at law other ***303** than to pursue their declaratory judgment action, Plaintiffs' fifth point on appeal urges this Court to enter judgment pursuant to Rule 84.14 regarding SAPA's constitutional validity in the interest of justice because no material facts are in dispute. The state disagrees, arguing the appropriate remedy is to remand the matter to the circuit court for it to consider Plaintiffs' constitutional claims in the first instance.

Rule 84.14 provides, "The appellate court shall award a new trial or partial new trial, reverse or affirm the judgment or order of the trial court, in whole or in part, or give such judgment as the court ought to give." Rule 84.14 further provides, "Unless justice otherwise requires, the court shall dispose finally of the case." Plaintiffs rely on *Nicolai* and *Gurley* to support their argument this Court should invoke Rule 84.14 and declare the parties' rights under SAPA rather than remand the cause for further proceedings.

In *Nicolai*, the city conceded the circuit court erred in failing to dismiss the cat owner's petition for failing to state a claim. *Nicolai*, 762 S.W.2d at 425. This Court reversed the circuit court's judgment and rendered "a final determination on the issues presented in the pleadings" upon the joint request of the parties. *Id.* at 426. This Court agreed "[b]ecause there [were] no disputed facts, and the issue [was] a purely legal one ...." *Id.* *Nicolai* is distinguishable because the parties here do not jointly request this Court to declare the parties' respective rights under SAPA.

[11] **[12]** In *Gurley*, the plaintiff applied for a private investigator's license, was denied initially, but received the license after the administrative hearing commission conducted its review. *Gurley*, 361 S.W.3d at 409. The plaintiff nevertheless continued to challenge the constitutional validity of the statutory scheme under which he was licensed. *Id.* The circuit court dismissed the plaintiff's constitutional claims after concluding the licensure statutes were constitutional on their face. *Id.* On appeal, this Court recognized when the circuit court "fails to make a declaration settling rights, as when it dismisses a petition without a declaration, a reviewing court may make the declaration." *Id.* at 411 (quoting *Nicolai*, 762 S.W.2d at 426). Moreover, "[w]hen there are no disputed facts, and the issue is a purely legal one, the reviewing court will declare the rights and duties of the parties." *Id.* (quoting *Law v. City of Maryville*, 933 S.W.2d 873, 877 (Mo. App. W.D. 1996)). *Gurley* does not aid Plaintiffs' position because the circuit court here has not been afforded any opportunity to review the merits of Plaintiffs' constitutional challenges or their claims for injunctive relief. Moreover, Plaintiffs concede they have not filed a dispositive motion seeking a declaration SAPA is unconstitutional. *Cf. Woods*, 595 S.W.3d at 505 (invoking Rule 84.14 to declare the rights of the parties rather than remand for further proceedings after the parties filed cross-motions for summary judgment). Accordingly, this Court declines Plaintiffs' invitation to enter judgment on the merits

on Plaintiffs' underlying claims pursuant to Rule 84.14 or address Plaintiffs' remaining points on appeal at this stage of the proceedings.

Conclusion

The circuit court's judgment is reversed, and the cause is remanded for further proceedings consistent with this opinion.

Wilson, C.J., Russell, Powell, Breckenridge and Ransom, JJ., concur; Fischer, J., dissents in separate opinion filed.

Zel M. Fischer, Judge, dissenting.

***304** I respectfully dissent. I would affirm the circuit court's judgment because Plaintiffs have an adequate remedy at law, and, therefore, their claims are not appropriate for declaratory judgment. As the principal opinion correctly states, "The lack of an adequate remedy at law is a prerequisite to relief via declaratory judgment," *City of Kansas City, Mo. v. Chastain*, 420 S.W.3d 550, 555 (Mo. banc 2014), and when an "alternative remedy is a pending suit, there is even greater justification to apply the rule against allowing declaratory judgment actions." *Schaefer v. Koster*, 342 S.W.3d 299, 300 (Mo. banc 2011). [1]

This Court has recognized declaratory judgment, "while ... interpreted liberally, is not a general panacea for all real and imaginary legal ills, nor is it a substitute for all existing remedies. It should be used with caution. And except in exceptional circumstances plainly appearing, it is not to be used and applied where an adequate remedy already exists." *Harris v. State Bank & Trust Co. of Wellston*, 484 S.W.2d 177, 178-79 (Mo. 1972). Writing for the three member dissent in *Alpert v. State*, Judge Wilson reiterated the bounds of the exception to this Court's general rule well, pointing out, "To be sure, this Court has been lax from time to time in enforcing this 'adequate remedy at law' requirement, but such deviations only can be justified —if at all—when there are 'exceptional circumstances' that 'plainly appear[ ]' from the facts of the case." 543 S.W.3d 589, 604 (Mo. banc 2018) (alteration in original) (quoting *Harris*, 484 S.W.2d at 178-89). Plaintiffs' broad facial challenge, lacking any specific factual allegations, certainly misses the targeted analysis justifying the exceptional relief of declaratory judgment. Should a precise, actual controversy be alleged to exist under SAPA relative to any of the Plaintiffs, a declaratory judgment may be proper, but a general declaratory judgment is not available to speculative "situations that may never come to pass." *Schweich v. Nixon*, 408 S.W.3d 769, 778 (Mo. banc 2013).

Here, there is nothing barring Plaintiffs from raising their constitutional issues as affirmative defenses in any suit brought pursuant to SAPA. Plaintiffs, therefore, possess an adequate remedy at law. The principal opinion dismisses this argument, simply asserting the pending suits "likely will not provide Plaintiffs an opportunity to adjudicate their specific constitutional ***305** claims due to their procedural posture[.]" To the contrary, not only have Plaintiffs raised facial constitutional claims as an affirmative defense in these pending cases, nothing precludes Plaintiffs from raising a facial challenge as a defense in any future case.

The principal opinion suggests "Plaintiffs need not subject themselves to multiple, individual suits to assert their constitutional challenges." But the pleadings in this case fail to demonstrate an "exceptional circumstance" and should not otherwise persuade this Court to depart from its general rule forbidding declaratory judgment actions when the plaintiff can assert its constitutional claim as a defense. Nevertheless, I encourage a prompt resolution of this case on remand by the circuit court so individual cases involving actual controversies will not be stalled pending the facial constitutional challenge pleaded in this case.

"In order to mount a facial challenge to a statute, the challenger must establish that no set of circumstances exists under which the [statute] would be valid." *Donaldson v. Mo. State Bd. of Registration for the Healing Arts*, 615 S.W.3d 57, 66 (Mo. banc 2020) (alteration in original) (internal quotation marks omitted). "It is not enough to show that, under some conceivable circumstances, the statute might operate unconstitutionally." *Id.* (internal quotation marks omitted). When "a statute is susceptible to more than one construction, this Court's obligation is to construe the statute in a manner consistent with the constitution." *City of Jefferson v. Missouri Dep't. of Nat. Res.*, 863 S.W.2d 844, 848 (Mo. banc 1993); *see also Glossip v. Mo. Dep't. of Transp. & Highway Patrol Employees' Ret. Sys.*, 411 S.W.3d 796, 802 (Mo. banc 2013) (holding "This Court will construe a statute in favor of its constitutional validity ..."); *Watts v. Lester E. Cox Med. Ctrs.*, 376 S.W.3d 633, 647 (Mo. banc 2012); *State*

ex rel. Praxair, Inc. v. Mo. Pub. Serv. Comm'n, 344 S.W.3d 178, 187 (Mo. banc 2011)[2].

Plaintiffs' facial challenge contends "[SAPA] ignores the Supremacy Clause and seeks to invalidate some universe of federal laws that the General Assembly deems unconstitutional[.] ... The General Assembly cannot impose its view of the validity of federal laws on anyone, much less the courts." The Solicitor General responds by contending a reasonable construction based on the text of SAPA demonstrates the General Assembly is merely "stat[ing] its view that such laws and regulations infringe[ ] on the right to keep and bear arms[.]" The Solicitor General, on behalf of State, argues SAPA was not intended and does not seek to nullify state or federal law, but rather expresses the General Assembly's collective opinion regarding the constitutional validity of the laws mentioned. No party to this case contends the collective opinion of the General Assembly in this regard usurps this ***306** Court's obligation of judicial review[3] or would bind this Court or any other court.

All Citations

643 S.W.3d 295

Footnotes

1 All statutory references to SAPA are to RSMo Supp. 2021.

2 This Court has exclusive jurisdiction over an appeal involving the constitutional validity of a statute. Mo. Const. art. V, sec. 3.

3 Because the state conceded there was "substantial overlap" between its motion for judgment on the pleadings and Plaintiffs' motion for injunctive relief and encouraged the circuit court to consider the motions together, this Court finds the factual allegations contained in the preliminary injunction are a part of the record before this Court. This Court does not, however, consider the renewed preliminary injunction as a response to the state's motion for judgment on the pleadings. Moreover, merely because the circuit court did not consider the allegations in the renewed preliminary injunction motion when making its ruling does not mean those factual allegations are not a part of the record below.

4 *See Quintin L. Davis v. St. Louis Metro. Police Dep't*, No. 21AC-CC00280 (Mo. Cir. Ct. July 26, 2021); *Darian R. Halliday v. St. Louis Metro. Police Dep't*, No. 21AC-CC00334 (Mo. Cir. Ct. Aug. 24, 2021) (asserting SAPA should be applied retroactively).

5 *Shawn D. Nettles St. Louis Metro. Police Dep't*, No. 21AC-CC00367 (Mo. Cir. Ct. Sept. 20, 2021) (seeking SAPA enforcement for conduct that occurred in 2018); *Michael D. Edwards v. Bennie B. Blackman, et al.*, No. 21AC-CC00383 (Mo. Cir. Ct. Oct. 4, 2021) (seeking SAPA enforcement for conduct that occurred in 2020); *Jason M. Thompson v. St. Louis Cnty. Police Headquarters*, No. 21AC-CC00392 (Mo. Cir. Ct. Oct. 8, 2021) (seeking SAPA enforcement for conduct that occurred in April 2021).

6 This Court's finding that the pending lawsuits do not provide an adequate remedy at law does not render superfluous section 1.460.1 enforcement actions or Plaintiffs' ability to assert defenses in the future. This Court's holding speaks only to Plaintiffs' ability to assert their constitutional challenges in the cited pending lawsuits when compared to seeking declaratory judgment.

1 The principal opinion wrongly asserts "Because the State conceded there was 'substantial overlap' between its motion for judgment on the pleadings and Plaintiffs' motion for injunctive relief and encouraged the circuit court to consider the motions together ... the factual allegations contained in the preliminary injunction are part

of the record before this Court." *Op.* at 299 n.3. This mistake results in the principal opinion considering factual allegations the circuit court did not consider when ruling on the State's motion for judgment on the pleadings.

At the hearing, when the State and City argued the City's motion for preliminary injunction and the State's motion for judgment on the pleadings, the circuit court and State engaged in the following exchange regarding the motions being heard:

> MR. SAUER: And, your Honor, if I may, there's really substantial overlap between the two motions. We might want to just argue them both at the same time. You know, there's – most of the issues I think are purely legal in the PI motion and obviously that's true in the motion for judgment on the pleadings.
>
> The COURT: Yeah, I'm sure that you-all won't re-plow ground that's already been tilled.

The only agreement was that the motions be argued at the same time, not that the factual allegations in the City's motion for preliminary injunction be considered as a response to the State's motion for judgment on the pleadings.

2 This Court's unanimous opinion in *State ex rel. Praxair, Inc. v. Missouri Public Service Commission*, explained this well-settled principle with clarity:

> Because the legislature is presumed to enact laws that comport with constitutional standards, this Court is reluctant to interpret statutes in a manner that would render them unconstitutional or raise serious constitutional difficulties. A court should avoid a construction which would bring a statute into conflict with constitutional limitations. It has long been an axiom of statutory interpretation that where an otherwise acceptable construction of a statute would raise serious constitutional problems, the Court will construe the statute to avoid such problems unless such construction is plainly contrary to the intent of the legislature.

344 S.W.3d at 187 n.7 (internal citations, alterations, and quotations omitted).

3 Mo. Const. art. V, § 3; *Marbury v. Madison*, 5 U.S. 137, 138, 1 Cranch 137, 2 L.Ed. 60 (1803).

End of Document

United States Code Annotated
Constitution of the United States
Annotated
Article III. The Judiciary

U.S.C.A. Const. Art. III § 2, cl. 1

Section 2, Clause 1. Jurisdiction of Courts [Text & Notes of Decisions subdivisions I to VII]

Currentness

<Notes of Decisions for Constitution Art. III, § 2, cl. 1, Jurisdiction of Courts, are displayed in multiple documents.>

Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;--to all Cases affecting Ambassadors, other public Ministers and Consuls;--to all Cases of admiralty and maritime Jurisdiction;--to Controversies to which the United States shall be a Party;--to Controversies between two or more States;--between a State and Citizens of another State;--between Citizens of different States;--between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

AUTHORITY TO REGULATE ABORTION

<For Dobbs v. Jackson Women's Health Org., No. 19-1392, see 597 U.S. ___ , 142 S.Ct. 2228, 213 L.Ed.2d 545 (U.S. June 24, 2022).>

Notes of Decisions (8275)

U.S.C.A. Const. Art. III § 2, cl. 1, USCA CONST Art. III § 2, cl. 1
Current through P.L.118-13. Some statute sections may be more current, see credits for details.

End of Document

U.S.C.A. Const. Art. VI cl. 2

Clause 2. Supreme Law of Land

Currentness

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Notes of Decisions (2272)

U.S.C.A. Const. Art. VI cl. 2, USCA CONST Art. VI cl. 2
Current through P.L.118-13. Some statute sections may be more current, see credits for details.

End of Document

United States Code Annotated
Constitution of the United States
Annotated
Amendment X. Reserved Powers to States

U.S.C.A. Const. Amend. X

Amendment X. Reserved Powers to States

Currentness

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Notes of Decisions (814)

U.S.C.A. Const. Amend. X, USCA CONST Amend. X
Current through P.L.118-13. Some statute sections may be more current, see credits for details.

End of Document

1.410. Citation of law — findings. — 1. Sections 1.410 to 1.485 shall be known and may be cited as the "Second Amendment Preservation Act".

2. The general assembly finds and declares that:

(1) The general assembly of the state of Missouri is firmly resolved to support and defend the Constitution of the United States against every aggression, whether foreign or domestic, and is duty-bound to oppose every infraction of those principles that constitute the basis of the union of the states because only a faithful observance of those principles can secure the union's existence and the public happiness;

(2) Acting through the Constitution of the United States, the people of the several states created the federal government to be their agent in the exercise of a few defined powers, while reserving for the state governments the power to legislate on matters concerning the lives, liberties, and properties of citizens in the ordinary course of affairs;

(3) The limitation of the federal government's power is affirmed under Amendment X of the Constitution of the United States, which defines the total scope of federal powers as being those that have been delegated by the people of the several states to the federal government and all powers not delegated to the federal government in the Constitution of the United States are reserved to the states respectively or the people themselves;

(4) If the federal government assumes powers that the people did not grant it in the Constitution of the United States, its acts are unauthoritative, void, and of no force;

(5) The several states of the United States respect the proper role of the federal government but reject the proposition that such respect requires unlimited submission. If the federal government, created by a compact among the states, were the exclusive or final judge of the extent of the powers granted to it by the states through the Constitution of the United States, the federal government's discretion, and not the Constitution of the United States, would necessarily become the measure of those powers. To the contrary, as in all other cases of compacts among powers having no common judge, each party has an equal right to judge for itself as to whether infractions of the compact have occurred, as well as to determine the mode and measure of redress. Although the several states have granted supremacy to laws and treaties made under the powers granted in the Constitution of the United States, such supremacy does not extend to various federal statutes, executive orders, administrative orders, court orders, rules, regulations, or other actions that collect data or restrict or prohibit the manufacture, ownership, or use of firearms, firearm accessories, or ammunition exclusively within the borders of Missouri; such statutes, executive orders, administrative orders, court orders, rules, regulations, and other actions exceed the powers granted to the federal government except to the extent they are necessary and proper for governing and regulating the United States Armed Forces or for organizing, arming, and disciplining militia forces actively employed in the service of the United States Armed Forces;

(6) The people of the several states have given Congress the power "to regulate commerce with foreign nations, and among the several states", but "regulating commerce" does not include the power to limit citizens' right to keep and bear arms in defense of their families, neighbors, persons, or property nor to dictate what sorts of arms and accessories law-abiding Missourians may buy, sell, exchange, or otherwise possess within the borders of this state;

(7) The people of the several states have also granted Congress the powers "to lay and collect taxes, duties, imports, and excises, to pay the debts, and provide for the common defense and general welfare of the United States" and "to make all laws which shall be necessary and proper for carrying into execution the powers vested by the Constitution of the United States in the government of the United States, or in any department or office thereof". These constitutional provisions merely identify the means by which the federal government may execute its limited powers and shall not be construed to grant unlimited

power because to do so would be to destroy the carefully constructed equilibrium between the federal and state governments. Consequently, the general assembly rejects any claim that the taxing and spending powers of Congress may be used to diminish in any way the right of the people to keep and bear arms;

(8) The general assembly finds that the federal excise tax rate on arms and ammunition in effect prior to January 1, 2021, which funds programs under the Wildlife Restoration Act, does not have a chilling effect on the purchase or ownership of such arms and ammunition;

(9) The people of Missouri have vested the general assembly with the authority to regulate the manufacture, possession, exchange, and use of firearms within the borders of this state, subject only to the limits imposed by Amendment II of the Constitution of the United States and the Constitution of Missouri; and

(10) The general assembly of the state of Missouri strongly promotes responsible gun ownership, including parental supervision of minors in the proper use, storage, and ownership of all firearms; the prompt reporting of stolen firearms; and the proper enforcement of all state gun laws. The general assembly of the state of Missouri hereby condemns any unlawful transfer of firearms and the use of any firearm in any criminal or unlawful activity.

(L. 2021 H.B. 85 & 310)

Effective 6-12-21

1.420. Federal laws deemed infringements of United State and Missouri Constitutions. — The following federal acts, laws, executive orders, administrative orders, rules, and regulations shall be considered infringements on the people's right to keep and bear arms, as guaranteed by Amendment II of the Constitution of the United States and Article I, Section 23 of the Constitution of Missouri, within the borders of this state including, but not limited to:

(1) Any tax, levy, fee, or stamp imposed on firearms, firearm accessories, or ammunition not common to all other goods and services and that might reasonably be expected to create a chilling effect on the purchase or ownership of those items by law-abiding citizens;

(2) Any registration or tracking of firearms, firearm accessories, or ammunition;

(3) Any registration or tracking of the ownership of firearms, firearm accessories, or ammunition;

(4) Any act forbidding the possession, ownership, use, or transfer of a firearm, firearm accessory, or ammunition by law-abiding citizens; and

(5) Any act ordering the confiscation of firearms, firearm accessories, or ammunition from law-abiding citizens.

(L. 2021 H.B. 85 & 310)

Effective 6-12-21

1.430. Invalidity of federal laws deemed an infringement. — All federal acts, laws, executive orders, administrative orders, rules, and regulations, regardless of whether they were enacted before or after the provisions of sections 1.410 to 1.485, that infringe on the people's right to keep and bear arms as guaranteed by the Second Amendment to the Constitution of the United States and Article I, Section 23 of the Constitution of Missouri shall be invalid to this state, shall not be recognized by this state, shall be specifically rejected by this state, and shall not be enforced by this state.

(L. 2021 H.B. 85 & 310)

Effective 6-12-21

1.440. Protection of citizens against infringement against right to keep and bear arms. — It shall be the duty of the courts and law enforcement agencies of this state to protect the rights of law-abiding citizens to keep and bear arms within the borders of this state and to protect these rights from the infringements defined under section 1.420.

(L. 2021 H.B. 85 & 310)

Effective 6-12-21

1.450. Enforcement of federal laws that infringe on right to keep and bear arms prohibited. — No entity or person, including any public officer or employee of this state or any political subdivision of this state, shall have the authority to enforce or attempt to enforce any federal acts, laws, executive orders, administrative orders, rules, regulations, statutes, or ordinances infringing on the right to keep and bear arms as described under section 1.420. Nothing in sections 1.410 to 1.480 shall be construed to prohibit Missouri officials from accepting aid from federal officials in an effort to enforce Missouri laws.

(L. 2021 H.B. 85 & 310)

Effective 6-12-21

1.460. Violations, liability and civil penalty — sovereign immunity not a defense. — 1. Any political subdivision or law enforcement agency that employs a law enforcement officer who acts knowingly, as defined under section 562.016, to violate the provisions of section 1.450 or otherwise knowingly deprives a citizen of Missouri of the rights or privileges ensured by Amendment II of the Constitution of the United States or Article I, Section 23 of the Constitution of Missouri while acting under the color of any state or federal law shall be liable to the injured party in an action at law, suit in equity, or other proper proceeding for redress, and subject to a civil penalty of fifty thousand dollars per occurrence. Any person injured under this section shall have standing to pursue an action for injunctive relief in the circuit court of the county in which the action allegedly occurred or in the circuit court of Cole County with respect to the actions of such individual. The court shall hold a hearing on the motion for temporary restraining order and preliminary injunction within thirty days of service of the petition.

2. In such actions, the court may award the prevailing party, other than the state of Missouri or any political subdivision of the state, reasonable attorney's fees and costs.

3. Sovereign immunity shall not be an affirmative defense in any action pursuant to this section.

(L. 2021 H.B. 85 & 310)

Effective 6-12-21

1.470. Employment of certain former federal employees prohibited, civil penalty — standing — no sovereign immunity. — 1. Any political subdivision or law enforcement agency that knowingly employs an individual acting or who previously acted as an official, agent, employee, or deputy of the government of the United States, or otherwise acted under the color of federal law within the borders of this state, who has knowingly, as defined under section 562.016, after the adoption of this section:

(1) Enforced or attempted to enforce any of the infringements identified in section 1.420; or

(2) Given material aid and support to the efforts of another who enforces or attempts to enforce any of the infringements identified in section 1.420;

shall be subject to a civil penalty of fifty thousand dollars per employee hired by the political subdivision or law enforcement agency. Any person residing in a jurisdiction who believes that an individual has taken action that would violate the provisions of this section shall have standing to pursue an action.

2. Any person residing or conducting business in a jurisdiction who believes that an individual has taken action that would violate the provisions of this section shall have standing to pursue an action for injunctive relief in the circuit court of the county in which the action allegedly occurred or in the circuit court of Cole County with respect to the actions of such individual. The court shall hold a hearing on the motion for a temporary restraining order and preliminary injunction within thirty days of service of the petition.

3. In such actions, the court may award the prevailing party, other than the state of Missouri or any political subdivision of the state, reasonable attorney's fees and costs.

4. Sovereign immunity shall not be an affirmative defense in any action pursuant to this section.

(L. 2021 H.B. 85 & 310)

Effective 6-12-21

1.480. Definitions — acts not deemed violation. — 1. For sections 1.410 to 1.485, the term **"law-abiding citizen"** shall mean a person who is not otherwise precluded under state law from possessing a firearm and shall not be construed to include anyone who is not legally present in the United States or the state of Missouri.

2. For the purposes of sections 1.410 to 1.480, **"material aid and support"** shall include voluntarily giving or allowing others to make use of lodging; communications equipment or services, including social media accounts; facilities; weapons; personnel; transportation; clothing; or other physical assets. Material aid and support shall not include giving or allowing the use of medicine or other materials necessary to treat physical injuries, nor shall the term include any assistance provided to help persons escape a serious, present risk of life-threatening injury.

3. It shall not be considered a violation of sections 1.410 to 1.480 to provide material aid to federal officials who are in pursuit of a suspect when there is a demonstrable criminal nexus with another state or country and such suspect is either not a citizen of this state or is not present in this state.

4. It shall not be considered a violation of sections 1.410 to 1.480 to provide material aid to federal prosecution for:

(1) Felony crimes against a person when such prosecution includes weapons violations substantially similar to those found in chapter 570 or * 571 so long as such weapons violations are merely ancillary to such prosecution; or

(2) Class A or class B felony violations substantially similar to those found in chapter 579 when such prosecution includes weapons violations substantially similar to those found in chapter 570 or * 571 so long as such weapons violations are merely ancillary to such prosecution.

5. The provisions of sections 1.410 to 1.485 shall be applicable to offenses occurring on or after August 28, 2021.

(L. 2021 H.B. 85 & 310)

Effective 6-12-21

*Word "chapter" appears here in original rolls.

1.485. Severability clause. — If any provision of sections 1.410 to 1.485 or the application thereof to any person or circumstance is held invalid, such determination shall not affect the provisions or applications of sections 1.410 to 1.485 that may be given effect without the invalid provision or application, and the provisions of sections 1.410 to 1.485 are severable.

(L. 2021 H.B. 85 & 310)

Effective 6-12-21

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. THE STATE OF MISSOURI; MICHAEL L. PARSON, Governor of the State of Missouri, in his official capacity; and ERIC SCHMITT, Attorney General of the State of Missouri, in his official capacity, Defendants.	)	Case No. 2:22-cv-4022

The United States of America, by and through its undersigned counsel, brings this civil action for declaratory and injunctive relief, and alleges as follows:

INTRODUCTION

1. This lawsuit challenges a Missouri state statute that purports to invalidate federal firearm laws within the State. The Missouri law uniquely discriminates against federal agencies and employees; impairs law enforcement efforts in Missouri; and contravenes the Supremacy Clause of the United States Constitution.

2. It is well established that Congress may "impos[e] conditions and qualifications on the commercial sale of arms," and may impose certain "prohibitions on the possession of firearms," including by felons and the mentally ill. *District of Columbia v. Heller*, 554 U.S. 570, 626-27 (2008); *see McDonald v. City of Chicago*, 561 U.S. 742, 786 (2010) ("[T]he right to keep and bear arms is not 'a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.'").

3. Despite the sound constitutional basis for federal firearm laws—and the important public-safety functions that Congress has enacted them to serve—the State of Missouri has adopted legislation that purports to preserve only those federal firearm laws that are also replicated by Missouri state law, nullifying essentially everything else. *See* Mo. Rev. Stat. §§ 1.410–1.485 (2021) ("H.B. 85").

4. In particular, H.B. 85 declares that certain categories of federal laws "shall be considered infringements on the people's right to keep and bear arms, as guaranteed by Amendment II of the Constitution of the United States." H.B. 85, § 1.420. The statute further commands that those federal firearm laws "shall not be recognized by this state" and "shall be specifically rejected by this state." *Id.* § 1.430. The statute imposes a "duty" on "the courts and law enforcement agencies of this state to protect" Missouri citizens from the purported federal infringements. *Id.* § 1.440.

5. The statute further declares that "[n]o entity or person . . . shall have the authority to enforce or attempt to enforce" the federal laws identified as "infringements." *Id.* § 1.450. Moreover, the law imposes financial penalties on state and local law enforcement agencies that employ any officer who enforces a prohibited federal law, and permanently bans federal officers or agents who enforce a prohibited federal law from subsequent employment by any local government or law enforcement agency in Missouri. *Id.* §§ 1.460, 1.470.

6. The Missouri law has had a harmful impact on public safety efforts within the state. Prior to enactment of H.B. 85, state and local law enforcement officers in Missouri routinely worked shoulder-to-shoulder with federal officers to keep Missourians safe. They did so by (among other things) sharing evidence, data, and other information critical to law enforcement and by participating in joint federal-state law enforcement task forces. H.B. 85,

however, now severely impairs federal criminal law enforcement operations within the State of Missouri. H.B. 85 prohibits state and local officers who have been deputized as federal officers from enforcing federal firearm laws. Critical information that state and local offices previously shared with federal law enforcement officers to facilitate public safety and law enforcement is now frequently unavailable to federal law enforcement agencies in the same manner as prior to H.B. 85. Moreover, H.B. 85 has caused rampant confusion about what activities are permissible under state law, which has only exacerbated the law's negative effects.

7. Although a state may lawfully decline to assist with federal enforcement, *see Printz v. United States*, 521 U.S. 898, 935 (1997), a state may not directly regulate federal authority. H.B. 85 does exactly that by purporting to nullify, interfere with, and discriminate against federal law.

8. By purporting to nullify federal law, H.B. 85 violates the Supremacy Clause of the United States Constitution. *See* U.S. Const., art. VI, cl. 2 ("This Constitution, and the Laws of the United States . . . shall be the supreme Law of the Land . . . any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."); *see United States v. Reynolds*, 235 U.S. 133, 149 (1914) ("If such state statutes . . . have the effect . . . to nullify statutes passed in pursuance [to the Federal Constitution], they must fail.").

9. H.B. 85 also purports to directly constrain the conduct of federal actors, impede federal operations, and discriminate against federal employees as well as state and local officials who voluntarily wish to assist the Federal Government in the enforcement of federal firearm laws, whether by obtaining federal deputations or providing other forms of investigative assistance. Accordingly, H.B. 85 is further invalid under the Supremacy Clause because it is preempted and because it violates intergovernmental immunity. *See, e.g.*, *M'Culloch v.*

Maryland, 17 U.S. 316, 317 (1819) ("States have no power . . . to retard, impede, burden, or in any manner control the operations of the constitutional laws enacted . . . by Congress to carry into effect the powers vested in the national government.").

10. In light of H.B. 85's infirmities and the harms to federal law enforcement interests, the United States seeks a declaratory judgment that H.B. 85 is invalid under the Supremacy Clause, is preempted by federal law, and violates intergovernmental immunity. The United States also seeks an order permanently enjoining the State of Missouri, including its officers, employees, and agents, from implementing or enforcing H.B. 85.

JURISDICTION AND VENUE

11. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1345.

12. Venue is proper in this judicial district under 28 U.S.C. § 1391(b) because Defendants reside within this judicial district and because a substantial part of the events or omissions giving rise to this action occurred within this judicial district.

13. Divisional venue lies in the Central Division of the Western District of Missouri under Local Rule 3.2(b) because the Governor of Missouri legally resides in Jefferson City, Missouri, and because that is where the claim for relief arose.

PARTIES

14. Plaintiff is the United States of America.

15. Defendant the State of Missouri is a State of the United States. The State of Missouri includes all of its officers, employees, and agents.

16. Defendant Michael L. Parson is the Governor of Missouri, and is sued in his official capacity. The Governor is Missouri's chief executive officer. As such, the Governor

oversees all of Missouri's executive agencies, including the Department of Public Safety and the Missouri State Highway Patrol.

17. Defendant Eric Schmitt is the Attorney General of Missouri, and is sued in his official capacity. The Attorney General is Missouri's chief legal officer.

STATEMENT OF THE CLAIM

I. Constitutional and statutory background.

A. The Supremacy Clause and preemption.

18. The Supremacy Clause of the U.S. Constitution mandates that "[t]his Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land . . . any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. Const., art. VI, cl. 2.

19. As the United States Supreme Court has made clear on many occasions, state legislatures have no authority to invalidate federal statutes or to disregard federal law. *See, e.g.*, *Cooper v. Aaron*, 358 U.S. 1, 18–19 (1958) (reaffirming the "basic principle that the federal judiciary," not an individual State, "is supreme in the exposition of the law of the Constitution"); *United States v. Reynolds*, 235 U.S. 133, 149 (1914) ("If such state statutes . . . have the effect to deny rights secured by the Federal Constitution or to nullify statutes passed in pursuance thereto, they must fail."); *Anderson v. Carkins*, 135 U.S. 483, 490 (1890) ("The law of congress is paramount; it cannot be nullified by direct act of any state, nor the scope and effect of its provisions set at naught indirectly."); *Ableman v. Booth*, 62 U.S. (21 How.) 506, 523–26 (1858); *United States v. Peters*, 9 U.S. (5 Cranch) 115, 136 (1809).

20. Additionally, under the doctrine of preemption, state law is invalid to the extent it conflicts with federal law. *Arizona v. United States*, 567 U.S. 387, 399 (2012) (conflict preemption includes both "cases where compliance with both federal and state regulations is a

physical impossibility, and those instances where the challenged state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress").

B. Intergovernmental immunity.

21. The doctrine of intergovernmental immunity also arises from the Supremacy Clause and reflects the principle that "[s]tates have no power . . . to retard, impede, burden, or in any manner control the operations of the constitutional laws enacted . . . by Congress to carry into effect the powers vested in the national government." *M'Culloch v. Maryland*, 17 U.S. 316, 317 (1819); *see also Mayo v. United States*, 319 U.S. 441, 445 (1943) ("[T]he activities of the Federal Government are free from regulation by any state."); *Johnson v. Maryland*, 254 U.S. 51, 56–57 (1920) (holding that state laws cannot "control the conduct of" individuals "acting under and in pursuance of the laws of the United States").

22. Under this doctrine, states also may not "discriminate[] against the Federal Government or those with whom it deals." *North Dakota v. Dole*, 495 U.S. 423, 435 (1990) (plurality op.). A state law thus violates intergovernmental immunity when it "treats someone else better than it treats" the federal government. *Washington v. United States*, 460 U.S. 536, 544–45 (1983).

C. Federal firearms statutes and regulations.

23. Congress regulates the sale, manufacture, and possession of firearms and ammunition through a comprehensive regulatory scheme established by the National Firearms Act ("NFA") and the Gun Control Act ("GCA"). *See* 26 U.S.C. §§ 5811–22, 5841; 18 U.S.C. §§ 921–24.

24. The NFA requires parties manufacturing or transferring certain firearms, as defined in the Act, to submit an application to the Attorney General for such transactions and pay

certain taxes, and it also requires that such firearms be registered. *See* 26 U.S.C. §§ 5811–5822, 5841.

25. Firearms regulated under the NFA include machine guns and certain types of rifles and shotguns, as well as silencers and "destructive devices" (such as grenades). *Id.* § 5845. The NFA does not regulate most handguns or rifles, nor does the NFA prohibit ownership of regulated firearms (with the exception of certain machine guns).

26. Congress enacted the GCA in 1968. Compared to the NFA, the GCA defines "firearms" more broadly, to include "(A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device." 18 U.S.C. § 921(a)(3).

27. The GCA contains licensing requirements. It states that any person who "engage[s] in the business of importing, manufacturing, or dealing in firearms, or importing or manufacturing ammunition" must "receive[] a license to do so from the Attorney General." *Id.* § 923(a); *see also id.* § 922(a)(1)(A) (prohibiting any person who is not "a licensed importer, licensed manufacturer, or licensed dealer, [from] engag[ing] in the business of importing, manufacturing, or dealing in firearms, or in the course of such business to ship, transport, or receive any firearm in interstate or foreign commerce").

28. License holders (called "Federal Firearms Licensees") must maintain "records of importation, production, shipment, receipt, sale, or other disposition of firearms," and may not transfer a firearm to an unlicensed person unless they complete a Firearms Transaction Record. *Id.* § 923(g)(1)(A); *see also* 27 C.F.R. § 478.121–.125. All such records must be available at the

Licensees' business premises for compliance inspections by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). *See* 27 C.F.R. § 478.121(b).

29. The GCA requires that every firearm that is imported or manufactured by a Licensee must be identified by a serial number and a mark indicating the model of the firearm, the Licensee's name or abbreviation, and the Licensee's location. 18 U.S.C. § 923(i); 27 C.F.R. § 478.92(a)(1).

30. Licensees must report the theft or loss of any firearm to ATF and local law enforcement authorities. 18 U.S.C. § 923(g)(6). They must also respond to requests by the Attorney General made in the course of a criminal investigation for information concerning the disposition of a firearm. *Id.* § 923(g)(7).

31. Additionally, the GCA prohibits the possession of firearms by certain categories of persons (when the requisite elements are met). Included among these categories are individuals who have been convicted of a felony, individuals who have been convicted of a misdemeanor crime of domestic violence, individuals who have been dishonorably discharged from the military, individuals who have been adjudicated as "mental defective[s]," noncitizens who are not lawfully in the United States, unlawful users of controlled substances, and others. *Id.* § 922(g).

32. Before making any over-the-counter firearms transaction, Federal Firearms Licensees must verify the purchaser's identity and must conduct a background check through the National Instant Criminal Background Check System (NICS), which is administered by the Federal Bureau of Investigation (FBI). *Id.* § 922(t); 27 C.F.R. §§ 478.102, 478.124(c).

33. Subject to the direction of the Attorney General, ATF has the authority to investigate criminal and regulatory violations of federal firearm laws. 28 U.S.C. § 599A; *see*

also 28 C.F.R. § 0.130. Penalties for such violations include fines, imprisonment, and forfeiture. *See* 18 U.S.C. § 924. Other federal agencies, such as the FBI and the United States Marshals Service (USMS), also enforce federal firearm laws when appropriate. *See generally* 28 C.F.R. §§ 0.85, 0.111.

II. Missouri H.B. 85.

34. Governor Parson signed H.B. 85 into law on June 12, 2021. *See* Mo. Rev. Stat. §§ 1.410–1.485 (2021) (codifying H.B. 85).

35. H.B. 85 declares that "federal acts, laws, executive orders, administrative orders, rules, and regulations," falling into five categories "shall be considered infringements on the people's right to keep and bear arms, as guaranteed by Amendment II of the Constitution of the United States and Article I, Section 23 of the Constitution of Missouri." H.B. 85, § 1.420.

36. The five categories of federal laws and regulations that H.B. 85 declares to be "infringements" are:

a. "[a]ny tax, levy, fee, or stamp imposed on firearms, firearm accessories, or ammunition not common to all other goods and services and that might reasonably be expected to create a chilling effect on the purchase or ownership of those items by law-abiding citizens," *id.* § 1.420(1);

b. "[a]ny registration or tracking of firearms, firearm accessories, or ammunition," *id.* § 1.420(2);

c. "[a]ny registration or tracking of the ownership of firearms, firearm accessories, or ammunition," *id.* § 1.420(3);

d. "[a]ny act forbidding the possession, ownership, use, or transfer of a firearm, firearm accessory, or ammunition by law-abiding citizens," *id.* § 1.420(4); and

e. "[a]ny act ordering the confiscation of firearms, firearm accessories, or ammunition from law-abiding citizens," *id.* § 1.420(5).

37. H.B. 85 is premised on an attempt to nullify these five categories of federal firearm laws. But all of the federal firearm laws that H.B. 85 purports to nullify, including but not limited to all of the examples listed in the following paragraph, are lawful and consistent with the Second Amendment.

38. H.B. 85's five categories of federal "infringements" encompass well-established federal requirements for the registration and tracking of firearms and limitations on the possession of firearms by certain persons, as set forth in the NFA, the GCA, and implementing regulations. *See* 26 U.SC. §§ 5811–22, 5841; 18 U.S.C. §§ 921–24; *see also supra* ¶¶ 24-32. For example:

a. H.B. 85 purports to invalidate "[a]ny registration or tracking of firearms," as well as "[a]ny registration or tracking of the ownership of firearms," H.B. 85 §§ 1.420(2), 1.420(3). Both of these prohibitions conflict with the NFA's registration requirements for certain firearms, *see* 26 U.S.C. § 5841, as well as the GCA's recordkeeping requirements for Federal Firearms Licensees. *See* 18 U.S.C. § 923(g)(1)(A) ("Each licensed importer, licensed manufacturer, and licensed dealer shall maintain such records of importation, production, shipment, receipt, sale, or other disposition of firearms at his place of business."); *see also* 27 C.F.R. § 478.124 (requiring individuals to provide certain information to Federal Firearms Licensees in connection with transfers of firearms).

b. H.B. 85 purports to invalidate "[a]ny act forbidding the . . . transfer of a firearm, firearm accessory, or ammunition by law-abiding citizens," *see* § 1.420(4), with the term "law-abiding citizens" defined solely with reference to state law. *See* § 1.480.1 ("[T]he term 'law-abiding citizen' shall mean a person who is not otherwise precluded under state law from possessing a firearm and shall not be construed to include anyone who is not legally present in the United States or the state of Missouri."). By authorizing all such "law-abiding citizens" to transfer firearms without regard to federal law, this provision of H.B. 85 conflicts with the GCA's requirement that only Federal Firearms Licensees are allowed to "engage in the business of . . . dealing in firearms," 18 U.S.C. § 923(a), and with other federal limits on the transfer of firearms by unlicensed individuals. *See, e.g.*, 18 U.S.C. § 922(a)(5) (prohibiting unlicensed individuals from transferring firearms to residents of other states).

c. H.B. 85 likewise purports to invalidate "[a]ny act forbidding the possession, ownership, [or] use . . . of a firearm, firearm accessory, or ammunition by law-abiding citizens." *See* §§ 1.420(4); 1.480(1). This provision would invalidate several important federal criminal prohibitions for which there is no analogous crime under Missouri state law, including prohibitions on possession of a firearm by a person convicted of a domestic-violence misdemeanor, 18 U.S.C. § 922(g)(9); by a person subject to a certain type of restraining order preventing the stalking or harassment of an intimate partner, *id.* § 922(g)(8); or by a person dishonorably discharged from the military, *id.* § 922(g)(6).

d. Additionally, Missouri law prohibits only some felons from possessing firearms: only those felons convicted under Missouri state law "or of a crime under the laws of any state or of the United States which, if committed within this state, would be a felony." Mo. Rev. Stat. § 571.070.1(1). Thus, H.B. 85 purports to invalidate the federal prohibition on felons possessing firearms or ammunition, *see* 18 U.S.C. § 922(g)(1), with respect to those individuals convicted of felonies but whose crimes are not considered felonies under Missouri state law. *Compare, e.g.*, 18 U.S.C. § 2101 (federal felony charges pertaining to rioting), *with* Mo. Rev. Stat. § 574.050 (rioting only a misdemeanor); 18 U.S.C. § 247(d)(3) (federal felony charges for individuals who injure others in the free exercise of religious beliefs), *with* Mo. Rev. Stat. § 574.035(3)(2) (injury to persons exercising religious freedom in a house of worship only a misdemeanor). Indeed, there are likely broad swaths of federal felony crimes for which there is no Missouri state equivalent, including federal import-export control violations, federal espionage charges, federal tax crimes, federal environmental crimes, and bankruptcy crimes.

39. The limitation to "law-abiding citizens" in some of H.B. 85's nullification provisions does not save the statute from facially conflicting with federal law. As noted, the statute defines a "law-abiding citizen" as "a person who is not otherwise precluded under *state law* from possessing a firearm," at least so long as the person is "legally present in the United States [and] the state of Missouri." H.B. 85, § 1.480.1 (emphasis added). Thus, even if a person is prohibited from possessing a firearm under federal law, the person is still considered a "law-abiding citizen" under H.B. 85 if Missouri has not enacted a similar state law prohibition on that

person's firearm possession—as in the examples set forth above. Given this definition of "law-abiding citizens," H.B. 85's nullification provisions still facially conflict with federal law.

40. Moreover, H.B. 85 defines the term "law-abiding citizen" to mean "a *person* who is not otherwise precluded under state law from possessing a firearm," H.B. 85 § 1.480.1 (emphasis added). H.B. 85 thus appears to nullify federal laws that prohibit firearm possession in certain *places*, such as airports and other sensitive locations, because those laws generally forbid possession of firearms by everyone (including persons "not otherwise precluded under state law from possessing a firearm"). *See, e.g.*, 49 U.S.C. § 46314 (prohibiting entering an aircraft or airport area in violation of security requirements); 49 C.F.R. § 1540.111(a)(1) (prohibiting the carrying of weapons at airport inspection area); 18 U.S.C. § 922(q)(2)(A) (prohibiting carrying certain firearms in school zones); *id.* § 930 (prohibiting possession of firearms in federal facilities).

41. H.B. 85's nullification provisions purport to declare federal "acts" invalid. *See* H.B. 85, § 1.420. At a minimum, that includes the specific provisions of federal law discussed above.

42. H.B. 85 provides that the five categories of federal laws that constitute "infringements" under § 1.420 "shall be invalid to this state, shall not be recognized by this state, shall be specifically rejected by this state, and shall not be enforced by this state." *Id.* § 1.430. H.B. 85 also provides that "[i]t shall be the duty of the courts and law enforcement agencies of this state to protect the rights of law-abiding citizens to keep and bear arms within the borders of this state and to protect these rights from the infringements defined under section 1.420." *Id.* § 1.440.

43. In addition, H.B. 85 purports to divest *all* persons and entities from having authority to enforce the purportedly nullified federal firearm laws within the State: "No entity or person, including any public officer or employee of this state or any political subdivision of this state, shall have the authority to enforce or attempt to enforce any federal acts, laws, executive orders, administrative orders, rules, regulations, statutes, or ordinances infringing on the right to keep and bear arms as described under section 1.420." *Id.* § 1.450.

44. H.B. 85 also imposes civil penalties that threaten state and local law enforcement agencies with significant financial liability to the extent they participate in enforcement of federal firearm laws. First, H.B. 85 provides that each time a state or local law enforcement agency enforces or attempts to enforce any of the federal firearm laws purportedly nullified through § 1.420, the agency may be subject to a civil penalty of $50,000 and an injunction. *Id.* § 1.460.1.

45. Second, H.B. 85 imposes similar civil penalties on law enforcement and local entities that employ anyone who has ever played any role (since H.B. 85 was enacted) in enforcing federal firearm laws. Specifically, § 1.470 imposes a civil penalty of $50,000 "per employee" against any law enforcement agency or local government that "knowingly employs an individual acting or who previously acted as an official, agent, employee, or deputy of the government of the United States, or otherwise acted under color of federal law within the borders of [Missouri] who has knowingly" either (1) enforced or attempted to enforce "any of the infringements identified in section 1.420" or (2) has "[g]iven material aid and support to the efforts of another who enforces or attempts to enforce" them. *Id.* § 1.470.1. For example, this provision would impose liability on a local government entity in Missouri that hired an ATF official who played a role in enforcing federal firearm laws since June 2021, even if that former

ATF official would play no role in firearms enforcement in his or her new position with the local government. Moreover, H.B. 85 vests "[a]ny person residing in a jurisdiction who believes that an individual has taken action that would violate the provisions of this section" with standing to pursue these monetary penalties, *see id.*, as well as "standing to pursue an action for injunctive relief . . . with respect to the actions of such individual." *Id.* § 1.470.2.

46. The overall purpose and effect of H.B. 85 are thus to nullify federal firearm laws and to affirmatively interfere with their enforcement. Indeed, the General Assembly's findings and declarations in § 1.410 make clear that H.B. 85's purpose and intent are to nullify federal firearm laws. *See, e.g.*, *id.* § 1.410.2(6) (asserting that Congress does not have "the power to limit citizens' right to keep and bear arms in defense of their families, neighbors, persons, or property nor to dictate what sorts of arms and accessories law-abiding Missourians may buy, sell, exchange, or otherwise possess within the borders of this state").

47. Both the judicial and executive branches of the government of the State of Missouri are charged with implementing and enforcing H.B. 85. For example, the statute imposes a "duty" on "the courts and law enforcement agencies of this state to protect" against the alleged "infringements defined under section 1.420." H.B. 85 § 1.440. As discussed further below, the Missouri State Highway Patrol has implemented H.B. 85 by withdrawing personnel from federal task forces and restricting the information that can be shared with federal authorities in connection with federal firearm offenses. Additionally, the State of Missouri may initiate enforcement actions under H.B. 85's penalty provisions, §§ 1.460 and 1.470.

III. H.B. 85 irreparably injures the United States.

48. The United States has compelling interests in preventing crime and promoting public safety, particularly with respect to crimes involving firearms that affect or have moved in

interstate commerce. These interests are acute in the State of Missouri, which unfortunately suffers from substantial violent crime, including violent crime involving firearms.

49. Since its enactment, H.B. 85 has endangered public safety—and the United States' efforts to promote public safety—by imperiling the successful partnerships between federal, state, and local law enforcement agencies that are critical to fighting violent crime within Missouri.

50. Defendants have acknowledged that law enforcement partnerships with the Federal Government can "help get violent criminals off [Missouri's] streets."[1] And other law enforcement officials within Missouri have characterized H.B. 85 as a "benefit to criminals."[2] Indeed, in a pending state court case, over sixty Missouri law enforcement officials have filed affidavits confirming that H.B. 85 has hindered law enforcement's ability to defend and protect Missouri citizens.[3]

A. H.B. 85 rejects all legal authority to enforce federal law, undermining federal officials and federal task forces.

51. Federal law enforcement officials frequently enforce federal firearm laws, including those that H.B. 85 declares invalid. Federal law enforcement agencies also routinely enforce federal law through partnerships known as task forces.

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[1] *See Governor Parson Announces State's Plan, Immediate Action Items to Help Combat Violent Crime in the St. Louis Region*, September 19, 2021, https://governor.mo.gov/press-releases/archive/governor-parson-announces-states-plan-immediate-action-items-help-combat.

[2] CBS News (60 Minutes), *Missouri's Second Amendment Preservation Act outlaws local enforcement of federal gun laws* (Nov. 7, 2021), https://perma.cc/EZN2-KHT5.

[3] *See City of Arnold v. State of Missouri*, No. 22JE-CC00010 (Jefferson Cty. Cir. Ct.), *Amicus Brief of the St. Louis Area Police Chiefs Association*, Exhs. A-1 – A-15 (filed Jan. 7, 2022), and *Amicus Brief of the Missouri Police Chiefs Association*, Exhs. A-1 – A-58 (filed Jan. 7, 2022).

52. These task forces typically involve state and local law enforcement officers being deputized as federal law enforcement officers and then serving alongside federal officials to enforce federal law. Once federally deputized, these state and local officers typically exercise federal authority when enforcing federal law. *See, e.g.*, 28 U.S.C. §§ 561(f), 566(c); 28 C.F.R. § 0.112(b); *see also* 21 U.S.C. § 878.

53. As an example, ATF relies on joint task forces to investigate and enforce laws prohibiting the illegal use, possession, and trafficking of firearms. Additionally, the USMS has several task forces across the State of Missouri, primarily devoted to the apprehension of fugitives, some of whom may be wanted for federal firearm violations. The state and local law enforcement officers serving on these task forces do so voluntarily and are bestowed with federal authority pursuant to federal deputations, as discussed above. Joint task force operations within the State of Missouri have produced significant results in fighting violent crime, including crime involving firearms.

54. H.B. 85 purports to reject, invalidate, and nullify all legal authority to enforce the federal firearm laws declared to be "infringements," including federal authority exercised by federal officials and state and local law enforcement officers with federal deputations. *See* H.B. 85 §§ 1.420–1.450. H.B. 85 thus interferes with and undermines federal law enforcement. H.B. 85 has also harmed joint task forces by prompting some state and local law enforcement agencies to instruct their personnel not to enforce particular federal laws even when acting in a federal capacity.

55. These impairments caused by H.B. 85 have hindered federal agencies' ability to effectively pursue the enforcement of federal law against violent criminals. For example, from its creation in January 2020 through August 2021, the Columbia Violent Crimes Task Force

recovered 55 firearms from prohibited persons and made 30 arrests for violation of federal law and 35 arrests for violation of state law. These arrests stem from collaborative investigations involving violent crime offenses, firearm possession, or association with violent gang organizations. Since the enactment of H.B. 85, however, cooperative collaborations like this have been hindered across the state.

B. H.B. 85 injures the United States by penalizing information-sharing and other investigatory support.

56. In addition to task forces, federal law enforcement entities have developed other robust information-sharing networks in which state and local partners assist in solving and combating crime. These networks include state and local officers assisting with FBI NICS referrals and providing access to state and local crime-related data, police reports, investigative records, background information on investigative targets, and even access to physical evidence such as firearms and ammunition used in crimes. Federal agents often lack independent access to information contained within state and local databases, and thus they depend on state and local officials to assist in providing such information. Having complete, timely information relevant to a given crime is critical to solving that crime and preventing similar crimes from happening again.

57. H.B. 85 has caused many state and local law enforcement agencies to stop voluntarily assisting in the enforcement of any federal firearm offense, or even offer critical investigative assistance to the Federal Government for use in its enforcement activities. These consequences are the direct result of H.B. 85, which purports to nullify federal firearm laws, declares that "[n]o entity or person" shall have authority to enforce such laws, and threatens state and local law enforcement agencies with lawsuits and significant monetary liability for any acts that could be portrayed as participating or assisting in the enforcement of federal firearm laws.

58. One key information-sharing network is the National Integrated Ballistic Information Network ("NIBIN"). Operated by ATF, NIBIN is the sole inter-jurisdictional automated ballistic imaging network in the country. It is a vital resource for reducing violent crime because it enables investigators to match ballistics evidence in a particular case with other cases, both within the state and across the nation. This ability helps reveal previously hidden connections between violent crimes within the state and across different states and jurisdictions.

59. In the last three years, NIBIN has helped law enforcement officers in Missouri generate over 6,000 leads, including 3,149 leads in jurisdictions outside of where the lead was sourced. Further, from October 2019 to June 2021, NIBIN successfully identified approximately 200 suspects linked to firearm crimes in the State. NIBIN is therefore a critical tool in ATF's effort to combat federal firearm violations and violent crime in Missouri.

60. H.B. 85 significantly reduces the utility of information tools like NIBIN. The efficacy of NIBIN declines if reliable data is not routinely and timely entered into it. And due to H.B. 85, several state and local law enforcement agencies are not inputting data or following up on NIBIN investigatory leads, which undermines this important tool for reducing violent crime in Missouri. While some state and local agencies have recently resumed entering information into NIBIN, they do so only after complying with additional procedures, which delays the entry of information into NIBIN and likewise harms its efficacy.

61. H.B. 85 has also limited federal law enforcement's access to other essential information and investigatory support. The Missouri Information and Analysis Center, an entity operated by the Missouri State Highway Patrol that is intended to facilitate information-sharing between federal, state, and local law enforcement agencies, is no longer cooperating with federal agencies pursuing any federal firearm offenses, even when those offenses are ancillary to arrest

on another charge, thereby denying federal law enforcement access to important background information on investigative targets.

62. Because of H.B. 85, many local law enforcement agencies refuse to share information with federal partners or participate in federal grand juries pertaining to firearm matters unless they have been served with a formal subpoena compelling them to do so. Prior to H.B. 85, these activities would typically occur through informal requests and coordination. These disruptions to the free flow of vital information between previously cooperative agencies impairs the work of federal, state, and local law enforcement alike.

63. Specific events highlight H.B. 85's adverse effects on law enforcement. For example, on September 5, 2021, a Missouri State Highway Patrol Trooper stopped a vehicle for speeding and determined that the driver was wanted on an arrest warrant for a federal firearm-related violation. Notwithstanding this federal arrest warrant, the Trooper allowed the driver to continue on his way, apparently based on the Trooper's understanding of what H.B. 85 required. The driver's vehicle was registered in Arizona and the driver had no ties to the state, but instead was just passing through Missouri. The individual was ultimately detained by local law enforcement in Arizona approximately one month later.

64. Federal law enforcement agencies are hindered in their mission to promote public safety when state and local partners refuse to provide information in connection with important tools like NIBIN and in individual cases.

C. H.B. 85 facially discriminates against federal law and federal employees.

65. H.B. 85's scheme of penalties expressly discriminates against individuals who enforce the federal firearm laws deemed invalid, by making those individuals effectively unemployable by "[a]ny political subdivision or law enforcement agency" within the State of Missouri. *See* H.B. 85 §§ 1.460, 1.470. Any political subdivision or law enforcement agency

who employs or seeks to employ any such individual would be subject to a civil monetary penalty of $50,000, as well as a suit for "injunctive relief." *Id.*

66. These penalty provisions impose a unique disability on federal employees—and others acting under color of federal law, such as state and local law enforcement officers deputized to enforce federal law—whose responsibilities involve enforcement of federal firearm laws. Such individuals are precluded from pursuing employment with "any political subdivision or law enforcement agency" in the State of Missouri.

67. Prior to H.B. 85, it was relatively common for federal employees involved in the enforcement of federal firearm laws to seek and obtain employment with political subdivisions and/or law enforcement agencies within Missouri. The same is true for federally deputized state and local officials involved in the enforcement of federal firearm laws, who also commonly sought and obtained employment with other political subdivisions and/or law enforcement agencies within Missouri. H.B. 85 now renders those individuals unemployable in such jobs, solely as a result of their prior lawful federal service.

68. By making involvement in federal firearm enforcement a disqualifying characteristic for certain jobs within the State of Missouri, H.B. 85 seeks to undermine current federal officers' willingness to enforce federal firearm laws, and makes becoming a federal officer less attractive by limiting those officers' future job prospects within the State of Missouri. Thus, H.B. 85's discriminatory scheme of employment penalties threatens to undermine the Federal Government's own interests in ensuring that it attracts the best applicants and that those individuals, once they assume federal office, do not face unlawful consequences as a result of their federal service.

69. Missouri state law, as a result of H.B. 85, uniquely penalizes the exercise of federal authority, and treats federal officers worse than Missouri law enforcement officials, and also worse than other states' law enforcement officials who enforce their state's firearm laws. Unlike federal officers, other states' law enforcement officials remain free to seek employment with the State of Missouri (and its political subdivisions) without penalty or interference, regardless of whether those officials enforced other states' firearm laws that are identical to, or even stricter than, federal firearm laws. Thus, H.B. 85 penalizes federal officers purely because of their federal status.

D. H.B. 85 injures the United States by causing confusion among law enforcement officers, Federal Firearms Licensees, and the public at large.

70. Unless enjoined, H.B. 85 will continue to mislead state and local law enforcement officers, the regulated community of Federal Firearms Licensees, and private citizens, all of whom are obligated to comply with federal firearm laws.

71. State and local officials have expressed confusion and concern to federal counterparts regarding their obligations under H.B. 85. Some state and local officials recognize that H.B. 85 is an invalid attempt to nullify federal law and thus largely disregard it, while other officials feel compelled to treat H.B. 85 as binding unless and until it is overturned.

72. Moreover, there are numerous aspects of H.B. 85 that are vague and make it difficult for state and local law enforcement officials to definitively know what the law means, how to implement it, or the parameters under which they can still provide assistance to federal law enforcement. For example:

a. As noted above, H.B. 85 purports to nullify a non-exhaustive list of categories of federal laws, without specifying the exact federal laws declared invalid or the scope of those laws declared invalid, *see* ¶¶ 36-40, *supra*;

b. Also as noted above, the definition of "law-abiding citizens" refers only to *persons* precluded from possessing firearms under state law, but says nothing about whether a person is a "law-abiding citizen" if they violate Missouri state law's restrictions on use of firearms or place-based restrictions on firearm possession, *see* ¶ 40, *supra*;

c. H.B. 85 instructs that "[i]t shall be the duty of . . . law enforcement agencies of this state to protect the rights of law-abiding citizens . . . from the [federal] infringements defined under section 1.420," H.B. 85 § 1.440, but does not specify what exactly that "duty" entails or requires.

d. H.B. 85 states that "[i]t shall not be considered a violation . . . to provide material aid to federal prosecution for . . . [f]elony crimes against a person when such prosecution includes weapons violations substantially similar to those found in chapter 570 or chapter 571," or to certain drug felonies involving weapons violations, "so long as such weapons violations are merely ancillary to such prosecution." H.B. 85 § 1.480.4. But H.B. 85 does not define what it means for weapons violations to be "ancillary" to other charges being prosecuted. Nor does H.B. 85 define "crimes against a person" which, under Missouri law, could be construed as a very narrow category. *See* Mo. Rev. Stat. ch. 565 (listing "Offenses Against the Person," including crimes such as murder, manslaughter, assault, and stalking); *but see, e.g.*, *id.* ch. 566 (listing "Sexual Offenses," which include rape, child molestation, and sex trafficking crimes); *id.* chs. 569-70 (listing crimes such as arson, burglary, carjacking, and robbery).

73. These features of H.B. 85 have generated substantial confusion across federal, state, and local law enforcement. This confusion has led to inconsistent applications of H.B. 85 across state and local agencies and has made reliance on state and local support a moving target for federal law enforcement officers. This uncertainty also undermines federal law enforcement's—as well as state and local law enforcement's—ability to protect public safety within Missouri.

74. Further, since H.B. 85 was passed, ATF became concerned that Federal Firearms Licensees would have questions or be confused about their legal obligations, such as federal recordkeeping and reporting requirements. As a result, ATF issued an informational letter to all Federal Firearms Licensees in Missouri, explaining that H.B. 85 does not alter the Licensees' legal obligations under federal law. *See* ATF, Open Letter to All Missouri Federal Firearms Licensees, https://www.atf.gov/firearms/docs/open-letter/missouri-open-letter-all-ffls-house-bill-number-85-second-amendment/download (July 26, 2021). If a Licensee chooses to disregard those obligations due to H.B. 85, not only will the Licensee put itself at risk of legal consequences, but there also could be significant harm to ATF's ability to trace guns used in crimes and to ensure that prohibited persons do not gain access to guns in the first instance. Importantly, ATF may not immediately know if a Licensee has chosen to disregard its obligations; such noncompliance may only be discovered after-the-fact, when critical information (such as the information that Licensees are supposed to record for every firearm transaction) may no longer be recoverable.

75. The above-described harms caused by H.B. 85 are ongoing, and unless enjoined, will continue. Thus, H.B. 85 should be enjoined to prevent the ongoing irreparable injury to the United States' efforts to promote public safety.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF: SUPREMACY CLAUSE

76. Plaintiff incorporates by reference the allegations set forth in each of the preceding paragraphs of this Complaint.

77. The Supremacy Clause provides that "[t]his Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land" and are binding upon "the Judges in every State," the "Laws of any State to the Contrary notwithstanding." U.S. Const., art. VI, cl. 2.

78. H.B. 85 violates the Supremacy Clause because it is premised on an attempted nullification of five categories of valid federal firearm laws. All of H.B. 85's operative provisions are designed to implement and incorporate this improper attempt at nullifying federal law, and thus are invalid.

79. All of H.B. 85's operative provisions are inseparable and intertwined with the H.B. 85's nullification provision, § 1.420. Thus, once § 1.420 is declared unconstitutional, all of H.B. 85 must be declared invalid as non-severable.

80. Because H.B. 85 is contrary to the established principle that a state cannot "control the operations of the constitutional laws enacted by [C]ongress," *M'Culloch*, 17 U.S. at 322, H.B. 85 is therefore invalid under the Supremacy Clause.

SECOND CLAIM FOR RELIEF: PREEMPTION

81. Plaintiff incorporates by reference the allegations set forth in each of the preceding paragraphs of this Complaint.

82. H.B. 85 violates the Supremacy Clause and is preempted because it is contrary to federal firearm laws, which expressly forbid certain conduct that H.B. 85 allows. *See supra*

¶¶ 36-40. H.B. 85 conflicts with and otherwise impedes the accomplishment and execution of the full purposes and objectives of federal law.

83. H.B. 85 therefore violates the Supremacy Clause because it is preempted under federal law.

THIRD CLAIM FOR RELIEF: VIOLATION OF INTERGOVERNMENTAL IMMUNITY

84. Plaintiff incorporates by reference the allegations set forth in each of the preceding paragraphs of this Complaint.

85. H.B. 85 violates intergovernmental immunity by directly regulating the activities of Federal agents and those with whom the Federal Government deals, including federal law enforcement officers, deputized state and local officers serving on federal task forces, and any other state or local law enforcement officer who seeks to voluntarily enforce federal law or share information regarding federal offenses with the Federal Government. *See* H.B. 85, §§ 1.420, 1.450, 1.460, 1.470.

86. H.B. 85 also violates intergovernmental immunity by discriminating specifically against individuals who have previously participated in the lawful exercise of federal authority, and treating them worse than individuals who may have enforced comparable state laws. *See* H.B. 85, §§ 1.420, 1.470.

87. H.B. 85 therefore violates intergovernmental immunity and is invalid.

PRAYER FOR RELIEF

WHEREFORE, the United States respectfully requests the following relief:

a. A declaratory judgment stating that H.B. 85 is invalid, null, void, and of no effect, and further clarifying that state and local officials may lawfully participate in joint federal task

forces, assist in the investigation and enforcement of federal firearm crimes, and fully share information with the Federal Government without fear of H.B. 85's penalties;

b. Injunctive relief against the State of Missouri, including its officers, agents, and employees (and any other persons who are in active concert or participation with such individuals), prohibiting any and all implementation and enforcement of H.B. 85;

c. Any and all other relief necessary to fully effectuate the injunction against H.B. 85's implementation and enforcement;

d. The United States' costs in this action; and

e. Any other relief the Court deems just and proper.

Dated: February 16, 2022

Respectfully submitted,

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