No. _____

In the Supreme Court of the United States

STATE OF MISSOURI, et al.,
Petitioners,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition for Writ of Certiorari to the U.S. Court of Appeals for the Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Under Missouri law, state officials cannot use state resources to enforce certain federal laws. In response to a suit filed by the Federal Government challenging this law, the Eighth Circuit agreed Missouri has core Tenth Amendment authority to pass such a law. The court nonetheless struck down Missouri's law on the ground that Missouri's legislature enacted it for a forbidden "reason"—the legislature's belief that certain federal laws are unconstitutional.

The questions presented are:

1. Can federal courts second-guess a State's "reason" for exercising Tenth Amendment authority (as the Eighth Circuit held) or not (as other circuits hold)?

2. Does the Constitution prohibit States from exercising Tenth Amendment authority when motivated by a concern that a federal statute is unconstitutional?

3. Is a state official a proper defendant under *Ex parte Young* simply because the official is *regulated* by a statute (as the Eighth Circuit held), or does the official also need to possess authority to *enforce* the law (as other circuits hold)?

PARTIES TO THE PROCEEDING

Petitioners State of Missouri, Governor Michael L. Kehoe,* and Attorney General Andrew Bailey were defendants in the U.S. District Court for the Western District of Missouri and appellants in the U.S. Court of Appeals for the Eighth Circuit.

Respondent United States of America was the plaintiff in the U.S. District Court for the Western District of Missouri and appellee in the U.S. Court of Appeals for the Eighth Circuit.

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* Governor Michael L. Kehoe is substituted as a party for Governor Michael L. Parson, who was a defendant in the proceedings in the U.S. Court of Appeals for the Eighth Circuit and the U.S. District Court for the Western District of Missouri.

STATEMENT OF RELATED PROCEEDINGS

This case arises from the following proceedings:

- *United States* v. *State of Missouri, et al.*, 23-1457 (CA8 Aug. 26, 2024) (appellate court decision)
- *United States* v. *State of Missouri, et al.*, 2:22-cv-04022-BCW (W.D. Mo. Mar. 7, 2023) (district court judgment)
- *State of Missouri, et al.*, v. *United States*, 24A476 (application to extend time to file a petition for writ of certiorari) (granted Nov. 14, 2024)
- *State of Missouri, et al.*, v. *United States*, 23A296 (Oct. 20, 2023) (application for emergency relief)
- *United States* v. *State of Missouri, et al.*, 23-1457 (CA8 Sept. 29, 2023) (application for emergency relief)

There are no other proceedings directly related to this case within the meaning of this Court's Rule 14.1(b)(iii).

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Br. United States, *Sch. of the Ozarks, Inc.* v. *Biden*, No. 21-2270 (CA8, Sept. 2, 2021).....26

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Saikrishna Prakash, *Why the President Must Veto Unconstitutional Bills*, 16 Wm. & Mary Bill Rts. J. 81 (2007) 3, 43

The Federalist No. 26 (A. Hamilton) (C. Rossiter ed. 1961) 35

The Federalist No. 28 (A. Hamilton) (C. Rossiter ed. 1961) 35

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PRIOR OPINIONS

The opinion of the court of appeals is available at 114 F.4th 980 (CA8 2024). App.1a–12a. The district court court's order is available at 660 F. Supp. 3d 791 (W.D. Mo. 2023). App.13a–44a. The order of this Court denying Petitioners' application for a stay pending appeal is at 144 S. Ct. 7 (2023). App.47a–48a. The order of the court of appeals denying Petitioners' application for a stay pending appeal is unpublished but available at 2023WL6543287 (CA8 Sept. 29, 2023). App.49a–50a.

JURISDICTION

The Eighth Circuit ruled on August 26, 2024. This Court has jurisdiction under 28 U.S.C. § 1254(1).

PROVISIONS INVOLVED

U.S. Const. amend. X provides:

> 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.

U.S. Const. art. VI, cl. 2 provides:

> This 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.

Mo. Rev. Stat. §§ 1.410–1.485 (in appendix).

INTRODUCTION AND SUMMARY OF ARGUMENT

Before this case, it appears no federal court had ever blocked a State from exercising Tenth Amendment authority simply because of the reason the State expressed for exercising that authority. The Eighth Circuit did that here, striking down a state law solely because the Act said the legislature believes certain federal statutes are unconstitutional. The Eighth Circuit's holding creates multiple circuit splits and is as wrong as it is unprecedented. As Professor Amar remarked in response, the decision is "analytically confounding . . . which is why I won't be remotely surprised if the Supreme Court ends up taking the case." Vikram Amar, *Judge States as They Do, Not as They Say* (Sept. 4, 2024).[1]

All officials who swear an oath to support and defend the Constitution necessarily must interpret the Constitution. That is why Presidents have long explained that they have "a duty to veto unconstitutional bills," and that is why Presidents have vetoed bills that, in their own judgment, violated the Constitution. Saikrishna Prakash, *Why the President Must Veto Unconstitutional Bills*, 16 Wm. & Mary Bill Rts. J. 81, 84–87 (2007). Imagine how strange it would be if a federal court tried to override a veto on the ground that a President's or governor's legal analysis was incorrect.

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[1] https://verdict.justia.com/2024/09/04/judge-states-as-they-do-not-as-they-say-why-the-eighth-circuits-invalidation-of-missouris-second-amendment-preservation-act-while-possibly-correct-as-to-result

Yet the Eighth Circuit did something similar here in the Tenth Amendment context. It declared a Missouri law unconstitutional solely because of the law's legislative findings—specifically, the legislature's opinion that some federal statutes are unconstitutional. App.10a–12a. The court took no issue with what Missouri's law *does*, only with what the legislative findings *say*. Indeed, the court agreed that a law with the same effect, but different findings, would be permissible. As the court put it, "Missouri may lawfully withhold its assistance from federal law enforcement" if it picks a different "*reason*," such as withholding resources "as a matter of policy" rather than as a matter of constitutional interpretation. App.10a (emphasis in original).

That novel holding creates several circuit splits. First, other circuits reject attempts to second-guess the reasons States give for exercising Tenth Amendment authority. Second, even though "the Act is enforced only by *private*-citizen suits," the Eighth Circuit held that the Federal Government could sue *public* officials because they are regulated by the Act and thus must "comply with" it. App.7a–9a (emphasis added). Other circuits—such as the First, Fourth, Fifth and Tenth—require defendants to have actual authority to *enforce*, not just a duty to comply with an Act.

The Eighth Circuit's decision is also wrong on the merits. In breaking new ground, the Eighth Circuit departed from precedent on standing, created a federal-government-exceptionalism standard for *Ex parte Young*, and created a non-textual limitation on the Tenth Amendment.

Consider standing. The Eighth Circuit's analysis fails all three elements of standing, but its analysis about causation sticks out. To invoke *Ex parte Young*, a plaintiff must show the defendant "enforce[s]" the challenged law. 209 U.S. 123, 155–56 (1908). But because Missouri's law is enforceable only by private parties, the Eighth Circuit said it is enough that Petitioners are regulated parties and thus must "comply with" the law. App.7a–9a. That conflates compliance with enforcement.

Redressability is also a problem. The Eighth Circuit acknowledged that Missouri officials still can withhold resources, even absent the statute. App.10a. It said redressability was still satisfied because Missouri officials *might* provide resources absent the statute. App.8a–10a. But just last term, this Court repeatedly rejected that kind of speculation.

For similar reasons, the ruling cannot be squared with the limits of federal court equitable powers. *Whole Woman's Health* v. *Jackson* squarely held that a private plaintiff must sue a defendant who actually enforces a law. 595 U.S. 30, 43–44 (2021). There is no reason the rule should be different when the plaintiff is the Federal Government.

On the merits, no text or precedent limits the reasons States can exercise Tenth Amendment authority. The Eighth Circuit agreed Missouri's law would be constitutional if its fact-findings rested on policy rather than constitutional opinion. But courts may issue injunctions only to stop "named defendants from taking specified unlawful *actions*," not to "enjoin challenged laws themselves." *Ibid.* (emphasis added)

(quotation omitted). The Eighth Circuit took no issue with the *effect* of the operative provisions in Missouri's law, only with what the legislative findings *say*. That flouts *Whole Woman's Health*.

History also supports Petitioners. The Eighth Circuit faulted Missouri's legislature for expressing its legal analysis, but state officials take an oath to abide by the Constitution, and Missouri's legislature "has not just the right but the duty to make its own informed judgment on the meaning and force of the Constitution." *City of Boerne* v. *Flores*, 521 U.S. 507, 535 (1997).

This case warrants review. Federalism concerns are at their highest when the United States sues a State, especially when the suit seeks to dismantle a state law so the Federal Government can access resources belonging to the State. And if a statute is at risk in the Tenth Amendment context because a State expresses concerns about the constitutionality of a federal statute, then innumerable state actions are at risk. Can a federal court override a governor's veto if the governor's veto message includes a constitutional interpretation at odds with the Federal Government's? Can a court do the same if a governor issues a signing statement that includes that kind of constitutional interpretation, as governors regularly do?

States are "not" "mere appendages of the Federal Government." *Fed. Mar. Comm'n* v. *S.C. State Ports Auth.*, 535 U.S. 743, 751 (2002). The Federal Government "cannot compel" a State "to enact or enforce" federal law, nor "conscript[ ] the State's officers directly." *Printz* v. *United States*, 521 U.S. 898, 933 (1997). The Court should grant certiorari because the Eighth Circuit, based solely on the legislature's

fact-findings, has prohibited the People of Missouri from governing their own state officers.

STATEMENT OF THE CASE

I. Because of constitutional concerns with certain federal laws, Missouri joins other States in enacting a statute prohibiting local officials from helping enforce those federal laws.

In 2021, Missouri joined several other States[2] in exercising Tenth Amendment authority not to assist the Federal Government with enforcement of certain firearms-related laws. Missouri's law is entitled the Second Amendment Preservation Act. Mo. Rev. Stat. §§ 1.410–1.485. The Missouri Supreme Court has authoritatively interpreted the statute's nine sections. It held that the first four sections are declaratory—they simply contain "legislative findings and declarations"—and the "five remaining sections comprise the substantive provisions." *City of St. Louis* v. *State*, 643 S.W.3d 295, 297 (Mo. 2022). Relevant here, the "legislative findings and declarations" express the legislature's opinion that certain federal laws are unconstitutional, and the substantive provisions instruct state officials not to help enforce those laws. §§ 1.410–1.485.

The Eighth Circuit devoted far more attention to the Act's "legislative findings" than to its "substantive

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[2] Ala. Code § 36-1-13; Ariz. Rev. Stat. § 1-272; Ky. Rev. Stat. § 237.105; Mont. Code §§ 45-8-365–368; N.D. Cent. Code § 62.1-01-03.1; Tex. Penal Code § 1.10.

provisions." The court merely summarized the substantive provisions—§§ 1.450 to 1.480—as provisions "withdraw[ing] the authority of state officers to enforce federal law." App.10a; *accord ibid.* (summarizing these provisions as Missouri "withhold[ing] its assistance from federal law enforcement"). In contrast, the court dwelled on the legislative findings. Two of those sections are relevant.

First is Section 2. That finding says the Missouri legislature has conducted a legal analysis and concluded that a few categories of federal statutes are unconstitutional. § 1.420. Section 2 expresses the legislature's opinion that those laws are "infringements on the people's right to keep and bear arms, as guaranteed by Amendment II of the Constitution of the United States." *Ibid.* Those laws include federal laws "ordering the confiscation of firearms . . . from law-abiding citizens," "forbidding the possession" of firearms by "law-abiding citizens," or imposing fees severe enough to "create a chilling effect" on keeping or bearing arms. *Ibid.*

The next section, Section 3, simply states that if a federal law violates the Constitution, Missouri officials should not help enforce it. § 1.430. Much like this Court regularly describes unconstitutional laws as "invalid," *e.g.*, *Michigan* v. *DeFillippo*, 443 U.S. 31, 37 (1979), Section 3 reaffirms the truism that "[a]ll federal acts . . . that infringe on the people's right to keep and bear arms as guaranteed by the Second Amendment . . . 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." § 1.430. This section does not identify any particular law.

The substantive sections enshrine the Act's only mechanism of enforcement: a private civil action against Missouri officials who violate the Act. § 1.460; *see also* § 1.470. "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.'" *City of St. Louis*, 643 S.W.3d, at 298 (quoting § 1.460.1). These provisions waive Missouri's sovereign immunity against private actions. §§ 1.460.3, 1.470.4.

Finally, Section 8 narrows the scope of federal statutes that Missouri officers may not help enforce. § 1.480. It clarifies that officers may "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 571" of Missouri's Revised Statutes. § 1.480.4(1). That covers many criminal offenses, including weapons offenses.

II. The United States sues Missouri, its Attorney General, and its Governor even though none of those defendants enforces the Act.

Eight months after the statute was enacted, the United States sued Missouri, its Attorney General, and its Governor—alleging that the Act is unconstitutional. App.13a–14a. Like the Federal Government and the private plaintiffs did in *Whole Woman's Health* and its companion case, *United States* v. *Texas*, 595 U.S. 74 (2021), the United States pressed a "nullification" theory, and it focused on Sections 2 and 3 of the Act even though the Missouri Supreme Court said

those provision are merely legislative findings, *City of St. Louis*, 643 S.W.3d, at 297. The United States insisted that the Act "nullif[ied]" federal law because those findings express the legislature's belief that certain federal laws are unconstitutional. App.31a.

The United States raised three counts under the Supremacy Clause: Count I, broadly labeled a "Supremacy Clause" claim; Count II, a "preemption" claim; and Count III, an "intergovernmental immunity" claim. App.14a. The United States never alleged that any defendant enforces the Act. The Federal Government also never identified a statutory or constitutional cause of action, relying instead on the Supremacy Clause despite this Court's holding that the Supremacy Clause does not create a right of action. *Armstrong* v. *Exceptional Child Ctr.*, *Inc.*, 575 U.S. 320, 324–25 (2015). Even so, the United States requested a "declaratory judgment that [the Act] is invalid, null, void, and of no effect." App.14a.

III. A federal district court "invalidate[s]" the Act, and the Eighth Circuit affirms.

The district court granted summary judgment for the United States. App.43a. Like the United States, the district court focused mostly on Section 2, saying the legislature's constitutional opinion was an "impermissible nullification attempt that violates the Supremacy Clause" and rendered the entire Act invalid. App.31a–40a. The final pages of the court's analysis adopted an alternative holding against the Act. App.40a–43a.

The district court then entered an injunction, but because the Act is enforceable only by private parties,

the district court *relieved* state officials from the obligation to obey the law. It also assured Missouri officials that they may violate the Act "without fear" of a future private action.

> [The Act] 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*.[3]

App.43a (emphasis added).[4]

On appeal, the Eighth Circuit also focused on the Act's legislative findings and affirmed. The Eighth Circuit did not address any alternative holding by the district court.

As to whether federal courts could hear a suit against state officials, the court acknowledged that "the Act is enforced only by private-citizen suits."

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[3] The order finishes by enjoining "all implementation and enforcement" by Missouri officers, but the order is unable to identify any officer that enforces the statute. App.43a–44a.

[4] Missouri applied for a stay pending appeal, which the Eighth Circuit and this Court denied. App.47a–50a. Justice Thomas dissented. App.47a. Justice Gorsuch, joined by Justice Alito, issued a statement reaffirming that a district court cannot enter an injunction "purporting to bind private parties not before the district court or the 'challenged' provisions 'themselves.'" App.47a–48a (quoting *Whole Woman's Health*, 595 U.S., at 44).

App.8a. Yet the court held that the United States could sue Missouri officials because those officials are *regulated* by the Act. Even though they do not "enforce[ ]" the Act, the Eighth Circuit determined the officials were "giving effect" to the Act by "comply[ing] with" it. App.7a–9a. The court never assessed Texas' law in *Whole Woman's Health*, which also regulated the officials who were named as defendants. Tex. Health & Safety Code § 171.208. There, this Court held that courts could not entertain a suit against state officials who did not enforce the statute at issue. 595 U.S., at 43–44.

On the merits, the Eighth Circuit's analysis comprised two short paragraphs, focusing entirely on Sections 2 and 3—which together express the legislature's opinion that certain federal laws are unconstitutional and state the truism that unconstitutional laws are invalid. The court took no issue with the *effect* of Missouri's law and acknowledged that "Missouri may lawfully withhold its assistance from federal law enforcement." App.10a. The court took issue only with the "*reason*" Missouri enacted its statute. *Ibid.* (emphasis in original). The court agreed Missouri's law would be constitutional if the legislature enacted it for a different "reason," like "as a matter of policy," but the court determined that by expressing an opinion that certain federal laws are unconstitutional, the Act "purport[ed] to invalidate federal law." *Ibid.*

The Eighth Circuit cited no Tenth Amendment case for its determination that courts can second-

guess a State's reason for exercising Tenth Amendment authority. Instead, it relied on a case about the Takings Clause. *Ibid.* (citing *Horne* v. *Dep't of Agric.*, 576 U.S. 350, 362 (2015)).

REASONS FOR GRANTING THE PETITION

I. Courts are split on whether federal courts can second-guess a State's reason for exercising Tenth Amendment authority.

The Eighth Circuit split with other circuits on how the Tenth Amendment's anti-commandeering principle applies. Under the anti-commandeering doctrine, the Federal Government "may not 'command the States' officers'" to "'administer or enforce'" federal law. *Murphy* v. *Nat'l Collegiate Athletic Ass'n*, 584 U.S. 453, 471, 473 (2018) (quoting *Printz*, 521 U.S., at 935). The Eighth Circuit did not dispute that Missouri's law *operates* in a way that satisfies this doctrine. It instead rejected Missouri's law because of the State's *reason* for enacting it. Other circuits have rejected the Eighth Circuit's maneuver.

For example, the Ninth Circuit upheld California's refusal to use state resources to help enforce federal law. *United States* v. *California*, 921 F.3d 865 (CA9 2019). As here, California enacted a law prohibiting state officials from assisting federal officials with enforcement of federal law (in that case, immigration law), and the United States challenged it "under the Supremacy Clause." *Id.*, at 873, 876. And as here, the United States attacked the reasons California passed its law: while "Congress expected cooperation between states and federal immigration authorities," California enacted several laws "with the express goal

'of protecting immigrants from an expected increase in federal immigration enforcement actions.'" *Id.*, at 875, 891 (citation omitted). The Federal Government argued that California's intent was to "frustrate" federal enforcement, undermining Congress's expectations, but the Ninth Circuit held that California's intent to "frustrat[e] is permissible, because California has the right, pursuant to the anticommandeering rule, to refrain from assisting with federal efforts." *Id.*, at 890–91.

The Ninth Circuit also said it would not review the "choice of a state," expressed in that State's statute, if the State could engage in the same conduct without passing a statute. *Id.*, at 890. Doing otherwise "would imply that a state's otherwise lawful decision *not* to assist federal authorities is made unlawful when it is codified as state law." *Ibid.*

The Seventh Circuit adopted similar analysis in two cases. The first concerned an Illinois law prohibiting "State agencies and political subdivisions from contracting with the federal government to house immigration detainees." *McHenry Cnty.* v. *Kwame Raoul*, 44 F.4th 581, 585 (CA7 2022). The law also required State entities to terminate existing contracts. *Id.*, at 586 (citing 5 Ill. Comp. Stat. 805/15(g)). Two Illinois counties challenged the law under the Supremacy Clause. *Ibid.*

Relying on the *California* decision, the Seventh Circuit rejected the challenge. *Id.*, at 591–94. It acknowledged that "*the* intended consequence of the Act" was to frustrate federal law enforcement, but it ruled this intent did not matter because "even before the Act was passed, local entities were free to withhold their cooperation or terminate existing agreements."

Id., at 593 (emphasis in original). The court also agreed with the Ninth Circuit that even if "[f]ederal immigration enforcement [is] frustrated by [state] law," the Federal government still "'could not *require* [a State's] cooperation without running afoul of the Tenth Amendment.'" *Id.*, at 592 (emphasis in original) (quoting *California*, 921 F.3d, at 891).

In another case, the Seventh Circuit rejected the United States' position that Chicago's policy of not cooperating with federal immigration authorities was done with an impermissible intent "to thwart federal law enforcement." *City of Chicago* v. *Sessions*, 888 F.3d 272, 282 (CA7 2018), *vacated in part on other grounds* No. 17-2991, 2018 WL 4268817 (CA7 June 4, 2018). The court "avoid[ed] the invitation" to "weigh in on broader policy considerations" like the city's intent, instead highlighting that "[t]he choice as to how to devote law enforcement resources—including whether or not to use such resources to aid in federal immigration efforts—would traditionally be one left to state and local authorities." *Ibid.* Although this latter case concerned a Spending Clause dispute, the court relied on concepts equivalent to the Tenth Amendment context—"the refusal of the local law enforcement to aid in civil immigration enforcement" of federal law. *Id.*, at 282–83.

Alone among the circuits, the Eighth Circuit blocked an otherwise-valid exercise of Tenth Amendment authority solely because of the reason Missouri exercised its authority. While the Seventh and Ninth Circuits (1) refuse to consider what a State *says* in a statute so long as it could *do* the same thing without a statute and (2) refuse to consider whether a

State is motivated by an attempt to "thwart" or "frustrate" federal efforts, the Eighth Circuit judges a statute based on what it says, even if what the statute does is perfectly permissible.

II. Courts are split on whether parties can challenge a state statute by suing officials who themselves are "regulated" by a state statute but do not "enforce" it.

The Eighth Circuit acknowledged that "the Act is enforced only by private-citizen suits." App.8a. The court nonetheless concluded that the Federal Government could still sue the Attorney General and the Governor because those officials are *regulated* by the Act. App.7a–9a. In the Eighth Circuit's view, the Attorney General and Governor "give effect" to the Act because they "comply with" it; they "have a duty under the Act to refrain" from assisting federal officers and would be freed from obeying the Act's mandate if it were declared unconstitutional. *Ibid.*

1. That analysis conflicts with a decision by the Fifth Circuit. *United States* v. *Texas*, No. 21-50949, 2021 WL 4786458 (CA5 Oct. 14, 2021) (incorporating the analysis of *Whole Woman's Health* v. *Jackson*, 13 F.4th 434 (CA5 2021), and *Whole Woman's Health* v. *Jackson*, 141 S. Ct. 2494 (2021)). As here, *Texas* involved a statute that only private parties could enforce. 13 F.4th, at 440. Yet the Fifth Circuit rejected an attempt by the United States to sue state officials to challenge the law. 2021 WL 4786458. The court explained that a State officer is a proper defendant under *Ex parte Young* only when the officer enforces the challenged law. 13 F.4th, at 442. Under this standard, the United States could not sue the

Texas Attorney General because he had no "enforcement connection" with the statute and his "general duty to enforce state law" could not render him "suable under *Young*." *Id.*, at 443; 2021 WL 4786458.

It also made no difference that Texas officials had to comply with the Texas law, like the Missouri officials do here. The Texas statute, for example, prohibited public officials from "paying for or reimbursing the costs of an abortion through insurance or otherwise" or in any other way facilitating abortion. Tex. Health & Safety Code § 171.208. The statute also provided for sovereign immunity *only* in cases "that challenge[d] the validity" of the law, not cases that sought only damages. § 171.211(b). Under the Eighth Circuit's logic, the United States should have been able to sue Texas officials because they were "giving effect to a state statute" by obeying it. App.8a (quotation omitted). But the Fifth Circuit concluded otherwise. 13 F.4th, at 443; 2021 WL 4786458.

2. Other courts also reject the Eighth Circuit's conclusion that actual "enforcement" authority is unnecessary for a plaintiff to sue a state official.

In the Tenth Circuit, for example, a defendant "must 'have a particular duty to "*enforce*" the statute in question and a demonstrated willingness to exercise that duty.'" *Free Speech Coal., Inc.* v. *Anderson*, 119 F.4th 732, 736 (CA10 2024) (emphasis added) (citation omitted). Merely having a duty to respond to the law is not "enforcement." *Id.*, at 740–41.

There, plaintiffs sued two officials to challenge a pornography age-verification law: the Utah Attorney General and Utah's Commissioner of Public Safety. *Id.*, at 735. Noting that some cases say a party needs to "give effect" to a statute to be a proper defendant,

the Tenth Circuit adopted a narrow reading of "give effect," interpreting that phrase to mean "enforce," not just implement in some way. *Id.*, at 736; *see also id.*, at 738 (requiring a "nexus between the Commissioner and the enforcement of the challenged statute"). The plaintiffs argued that the Attorney General was a proper defendant because he had a duty under the law to write official opinions directing agencies on how to enforce a law. *Id.*, at 740–41. The court concluded that this compliance duty "did not give the attorney general control over *enforcing* the challenged act." *Ibid*. (emphasis in original) (alterations accepted, quotation omitted). The plaintiffs also argued that the Commissioner "g[a]ve effect" to the law by managing a program providing "digitized identification cards" that enable companies to comply with the law by verifying a user's identity. *Id.*, at 736. But the Tenth Circuit held that this implementation did not "amount to a particular duty to 'enforce' the statute." *Id.*, at 738.

Likewise, in *United States* v. *Abbott*, 85 F.4th 328 (CA5 2023), the United States and private plaintiffs sued Texas and its Governor after the Governor issued an executive order prohibiting "private individuals from providing ground transportation to migrants who were previously detained or subject to expulsion." *Id.*, at 332–33. The Fifth Circuit held that an injunction against the Governor was improper because "the Governor [wa]s not charged with enforcement of the [executive] order." *Id.*, at 334. The Court explained that "*Ex parte Young* only permits injunctions against state officials who 'have some connection with the enforcement of the act,' or are 'specially charged with the duty to enforce' the law at issue." *Id.*, at 334 (quoting

Ex parte Young, 209 U.S., at 157–58; also citing *Whole Woman's Health*, 595 U.S., at 39). The Governor gave "effect" to the executive order in the colloquial sense—he *issued* it—but the court concluded that *Ex parte Young* requires enforcement.

Unlike all these cases requiring actual enforcement authority, the Eighth Circuit does not require the defendant to "enforce" the law; it is enough that they "give effect" to a law by "comply[ing] with" it. App.7a–10a.

3. Other circuits split from the Eighth Circuit by noting that the failure to identify a defendant who "enforces" the statute is not just an *Ex parte Young* problem; it is an Article III problem.

The First Circuit rejected a suit against a state governor and attorney general because the challenged statutes provided "a purely private cause of action" and "neither the Governor nor the Attorney General has any connection with enforcement of the act." *Shell Oil Co.* v. *Noel*, 608 F.2d 208, 210–11 (CA1 1979) (alteration adopted) (quotation omitted). This failure meant there was "no 'case or controversy.'" *Id.*, at 213.

The Fourth Circuit similarly rejected a challenge to a South Carolina law prohibiting school mask mandates, because there was no evidence the named defendants would take "any action enforcing" the law. *Disability Rts. S.C.* v. *McMaster*, 24 F.4th 893, 901 (CA4 2022). This was true even though the governor publicly supported the challenged law. Despite his vocal support, he was an improper defendant because he was "not equipped with the authority to enforce" the law. *Id.*, at 902. The Court emphasized that the "principles" underlying *Ex parte Young* "apply with

equal force in the standing context." *Id.*, at 901. Under those principles, "[w]hen a defendant has no role in enforcing the law at issue, it follows that the plaintiff's injury allegedly caused by that law is not traceable to the defendant," and it is "wholly speculative" that an order would satisfy redressability. *Id.*, at 901–04.

III. The Eighth Circuit decision is incorrect.

The Eighth Circuit is not only alone on these splits; it is also wrong. Its analysis on Article III, the cause of action, and the merits fails.

A. The Eighth Circuit's novel approach to standing contradicts Article III.

The Eighth Circuit's standing analysis was incorrect on all three elements: injury in fact, causation, and redressability.

1. On injury, the court failed to identify a "legally protected interest." *Lujan* v. *Defs. of Wildlife*, 504 U.S. 555, 560 (1992). The Eighth Circuit said the Federal Government had an Article III interest in Missouri officials expending Missouri resources to help federal law enforcement. App.6a–8a. But that interest is not "legally protected," *Lujan*, 504 U.S., at 560, "because [each State] has the right, pursuant to the anticommandeering rule, to refrain from assisting with federal efforts," *California*, 921 F.3d, at 891; *Printz*, 521 U.S. at 935 (the Federal Government may not "conscript[ ] the State's officers" to enforce federal law). The Federal Government has no legally protected right to Missouri's resources. And the Eighth Circuit identified no text, precedent, or history establishing that a State's exercise of Tenth Amendment

authority is a cognizable injury to the Federal Government. "Were it otherwise, [the United] State[s] would always have standing to bring constitutional challenges when" a State exercises Tenth Amendment authority to withdraw assistance. *Haaland* v. *Brackeen*, 599 U.S. 255, 295 (2023).

2. Even more clearly incorrect is the Eighth Circuit's analysis about causation. Because the Eighth Circuit agreed that "the Act is enforced only by private-citizen suits," the Eighth Circuit determined that the Federal Government could sue because the named defendants "comply with the Act"—*i.e.*, they are regulated parties. App.7a–9a.

That logic conflates compliance with enforcement. A police officer does not "enforce" the speed limit by complying with it. Likewise, Missouri officers do not enforce the Act when they, as regulated parties, obey its directives. As this Court made clear in *California* v. *Texas*, a plaintiff cannot simply show that a statute increases costs; they must show "any actual or possible unlawful Government conduct in *enforcing*" the statute. 593 U.S. 659, 674–75 (2021) (emphasis added). "Th[is] Court's cases have consistently spoken of the need to assert an injury that is the result of a statute's actual or threatened *enforcement*, whether today or in the future." *Id.*, at 670 (emphasis in the original); *see also Somberg* v. *McDonald*, 117 F.4th 375, 381 (CA6 2024) ("[A] plaintiff satisfies the standing requirement if the state actor with power to inflict the penalty makes an implicit threat of imminent consequences.").

The Eighth Circuit's conflating of "compliance" with "enforcement" also flouts *Whole Woman's Health*. As explained above, the Texas officials were regulated

by the Texas statute, just like the Missouri officials are by Missouri's statute, yet this Court concluded there was no jurisdiction over those officials. That makes sense because if plaintiffs could evade the limits on federal equity simply by suing regulated parties, rather than parties in charge of enforcement, then plaintiffs *would* be able to "enjoin challenged laws themselves." *Whole Woman's Health*, 595 U.S., at 44 (quotation omitted).

3. The same error by the Eighth Circuit affects redressability. To justify its "comply with" theory, the Eighth Circuit noted that the Act directs Missouri officials to withdraw support for federal enforcement, so an injunction would "enjoin them from withdrawing *on that basis*." App.7a-8a (emphasis added). Yet the Eighth Circuit acknowledged that state officials can continue withholding resources on any other basis, like a "policy" disagreement with those laws. App.10a. In other words, the Eighth Circuit's ruling does not mean state officials will lend resources for federal enforcement, only that they might.[5]

That is not enough for redressability, which "precludes speculative links." *F.D.A.* v. *All. for Hippocratic Med.*, 602 U.S. 367, 383 (2024). "[I]t is entirely speculative" that the Attorney General and Governor will start providing state resources. *Murthy* v. *Missouri*, 603 U.S. 43, 69, 73 (2024). For example, the Attorney General's Office continues refusing to provide resources to the Federal Government to enforce those laws, just like the Attorney General's Office did

[5] Likewise, the district court's order merely assures Missouri officials they "may" disregard the Act "without fear of [the Act's] penalties." App.43a. The injunction does not guarantee that Missouri officials *will* provide enforcement assistance.

before the injunction. By not requiring defendants to change their behavior, the decision provides no redress.

And no wonder. The Federal Government's injury—if any—will flow indirectly from private plaintiffs enforcing the Act against Missouri officials in state court. The Federal Government cannot obtain "an injunction against a state court," *Whole Woman's Health*, 595 U.S., at 39, so they try the workaround of this case. But an injunction in federal court against the Attorney General and Governor does not redress that injury. Private plaintiffs can still pursue damages actions in state courts. "[R]edressability requires that the court be able to afford relief *through the exercise of its power*, not through the persuasive or even awe-inspiring effect of the opinion *explaining* the exercise of its power." *Brackeen*, 599 U.S., at 294 (emphasis in original) (citation omitted); *accord Murthy*, 603 U.S., at 73–74. As the Federal Government explained in an earlier brief, a plaintiff cannot establish redressability where, as here, an injunction would still leave private plaintiffs free to enforce a law. Br. United States, *Sch. of the Ozarks, Inc.* v. *Biden*, No. 21-2270, at 21 (CA8, Sept. 2, 2021).

The Seventh and Ninth Circuits agree. In their merits analysis in the cases described above, both noted that enjoining laws like these makes no sense. The States can refuse to assist federal enforcement with or without a statute. *California*, 921 F.3d, at 890; *McHenry Cnty.*, 44 F.4th, at 593. Enjoining a statute thus does not provide any relief; it simply interferes with the democratic process of the States.

Because no defendant enforces the Act, the district court and the Eighth Circuit had "no one, and nothing,

to enjoin." *California* v. *Texas*, 593 U.S., at 673. Federal courts "are not roving commissions assigned to pass judgment on the validity of the Nation's laws." *Broadrick* v. *Oklahoma*, 413 U.S. 601, 610–11 (1973). The Court should grant certiorari and reject the Eighth Circuit's contrary decision.

B. The decision conflicts with *Whole Woman's Health*.

For the same reasons the United States lacked standing, it also lacked an equitable cause of action.

1. The United States never contended it had a statutory or constitutional cause of action. All the United States' claims derive from the Supremacy Clause. But the Supremacy Clause is "a rule of decision," "not the source of any federal rights." *Armstrong*, 575 U.S., at 324 (quotation omitted). "It instructs courts what to do when state and federal law clash, but is silent regarding who may enforce federal laws in court, and in what circumstances they may do so." *Id.*, at 325; *see also id.*, at 324–25 ("[T]he Supremacy Clause . . . certainly does not create a cause of action.").

Unable to identify any cause of action, the United States invoked the equity jurisdiction of federal courts, which permits suits "to enjoin unconstitutional actions by state [ ] officers" who take "illegal executive action." *Armstrong*, 575 U.S., at 327.

But that doctrine does not apply here. In an equitable challenge to a state law, the plaintiff must "direct" a court to the "enforcement authority" that the State defendant "possesses" and that "a federal court might enjoin him from exercising." *Whole Woman's Health*, 595 U.S., at 43. The Attorney General's and

Governor's mere compliance with the Act is not "enforcement authority." It is not even "executive action" in the normal sense. The only "action" taken by the Attorney General and the Governor as regulated parties is the act of compliance—the same act *every* regulated party undertakes.

The decision to extend federal equity to this case thus runs headlong into over one hundred years of this Court's precedents. As this Court has long held, a state official is not a proper defendant merely because he has some "connection" to a statute. *Fitts* v. *McGhee*, 172 U.S. 516, 529 (1899). The officials must "have been charged by law with a[ ] *special duty* in connection with the act." *Ibid.* (emphasis added). They must be "specially charged with the execution of a state enactment" and "expressly directed to see to its enforcement." *Id.*, at 529–30. Neither applies to Petitioners. The Act gives them no special authority. They are in the same shoes as every other regulated party.

Nor can the United States appeal to the general authority of the Attorney General and Governor to oversee enforcement of state law. If it were otherwise, "then the constitutionality of every act passed by the legislature could be tested by a suit against the governor and the attorney general, based upon the theory that the former, as the executive of the state, was, in a general sense, charged with the execution of all its laws, and the latter, as attorney general, might represent the state in litigation involving the enforcement of its statutes." *Ibid.*; *Whole Woman's Health*, 595 U.S., at 43–45; *see also Brackeen*, 599 U.S., at 295; *Mendez* v. *Heller*, 530 F.2d 457, 460 (CA2 1976) (the attorney general "support[s] the constitutionality of

challenged state statutes . . . not as an adverse party, but as a representative of the State's interest in asserting the validity of its statutes").

The courts below brushed aside these principles by concluding that the United States can sue a defendant merely because the defendant is regulated by a statute. The district court's order reads like a direct repeal of a statute: it declares that Missouri officials can violate Missouri law "without fear of [the Act's] penalties" even though the Act's penalties arise only through private civil actions. App.43a. Unsurprisingly, neither the Eighth Circuit nor the district court could support its conclusion with a single case holding that merely "comply[ing] with" a statute as a regulated party makes one a proper defendant.

2. None of the cases cited by the Eighth Circuit or the United States justifies loosening the constraints on equity simply because the Federal Government is a plaintiff. The Eighth Circuit cited *United States* v. *Washington*, 596 U.S. 832, 837 (2022). But the cited section of *Washington* discusses procedural history and mootness. App.9a–10a (citing *Washington*, 596 U.S., at 837). It has nothing to do with whether federal courts have extraordinary equitable powers in suits brought by the United States.

The final two cases the Eighth Circuit cited—*United States* v. *Minnesota*, 270 U.S. 181 (1926), and *Sanitary District of Chicago* v. *United States*, 266 U.S. 405 (1925)—are also irrelevant. *Minnesota* held that the Federal Government has special solicitude to sue on behalf of Indian tribes as the guardian of their rights. 270 U.S., at 193–94; *see also Blatchford* v. *Native Vill. of Noatak & Circle Vill.*, 501 U.S. 775, 783 (1991) (discussing *Minnesota*). The United States

has not invoked special solicitude here.[6] *Sanitary District* held that the United States could seek an injunction against Chicago diverting water from Lake Michigan in violation of a treaty. 266 U.S., at 423, 426. Unsurprisingly, that opinion relied on the United States' duty to "carry out treaty obligations to a foreign power." *Id.*, at 425. In short, none of the cases cited by the Eighth Circuit supports the breathtaking authority the court created below. And no precedent of this Court suggests that the United States can sue to invalidate state law just because it is the United States.

3. In its briefing, the United States tried to rely on *In re Debs*, 158 U.S. 564 (1895). But the Eighth Circuit declined to rely on that case. App.9a–10a.

No wonder. As Justice Gorsuch noted last year, *Debs* "wasn't exactly our brightest moment." Tr. Oral Arg. 87, *Moyle* v. *United States*, No. 23-726 (April 24, 2024). *Debs* might "be the most controversial equity decision ever reached by the Supreme Court." Aditya Bamzai & Samuel L. Bray, Debs *and the Federal Equity Jurisdiction*, 98 Notre Dame L. Rev. 699, 734 (2022).

Contrary to the United States' contention below, *Debs* does not give the United States unbounded power to challenge the validity of state law. And if it ever did, *Debs* would no longer be good law in light of more recent holdings about equity. To be sure, language in *Debs* can—in isolation—be read broadly:

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[6] If courts should "leave th[e] idea" of special solicitude "on the shelf" when it comes to suits brought by States, *United States* v. *Texas*, 599 U.S. 670, 688–689 (2023) (Gorsuch, J., concurring in judgment), the same should be true of the Federal Government.

"Every government, intrusted by the very terms of its being with powers and duties to be exercised and discharged for the general welfare, has a right to apply to its own courts for any proper assistance in the exercise of the one and the discharge of the other." *Debs*, 158 U.S., at 584. But *Debs* was about habeas—Debs was in prison for violating an anti-strike injunction. *See id.*, at 565–73. *Debs* did not involve injunctive relief against a state law. *Ibid.* The holding that the United States had authority to seek the injunction against the labor strike that led to Debs' imprisonment rested on the United States' authority to protect its property interests and authority to abate public nuisances. *Id.*, 583–93. This Court did not rely on free-floating authority to challenge state laws or interfere with a State's exercise of the Tenth Amendment.

Later cases made clear that courts have the same equity constraints regardless of the identity of the plaintiff: "the equity jurisdiction of the federal courts is the jurisdiction in equity exercised by the High Court of Chancery in England at the time of the adoption of the Constitution and the enactment of the original Judiciary Act" in 1789. *Grupo Mexicano de Desarrollo S.A.* v. *All. Bond Fund, Inc.*, 527 U.S. 308, 318 (1999) (quotation omitted); *accord Atlas Life Ins.* v. *W.I. Southern, Inc.*, 306 U.S. 563, 568 (1939). Federal courts do not suddenly receive greater equity authority when the plaintiff is the United States.

C. Federal courts lack authority to second-guess the reason a State exercises Tenth Amendment authority.

1. On the merits, the sole question decided by the Eighth Circuit (other than severability) was whether federal courts can block a State's exercise of Tenth Amendment authority based on the "*reason*" the State gave for its decision. App.10a (emphasis in original). The Eighth Circuit correctly recognized that under the Tenth Amendment "Missouri may lawfully withhold its assistance from federal law enforcement." *Ibid.* But the court then wrongly held that Missouri exercised its Tenth Amendment authority for a forbidden reason: the legislature's desire not to assist with enforcement of federal statutes the legislature believes are unconstitutional.

That holding—judge a statute by what its legislative findings *say* rather than what its operative provisions *do*—finds no support in text, history, or precedent.

Nothing in the text of the Tenth Amendment limits the reasons a State can exercise authority. Nor does the Supremacy Clause. That Clause is "a rule of decision," "not the source of any federal rights." *Armstrong*, 575 U.S., at 324 (quotation omitted).

History likewise supports Missouri. As a "dual sovereign[ ]" with the United States, *Gregory* v. *Ashcroft*, 501 U.S. 452, 457 (1991), Missouri has authority to interpret the Constitution. State officials and legislatures historically have "not just the right but the *duty* to make [their] own informed judgment on the meaning and force of the Constitution." *City of Boerne*, 521 U.S., at 535 (emphasis added). This is

consistent "with *The Federalist*'s vision of state legislatures as political watchdogs." *See* Akhil Amar, *Of Sovereignty and Federalism*, 96 Yale L.J. 1425, 1502 (1987). Indeed, in *Federalist 26*, Hamilton allayed concerns about the excesses of the Federal Government by emphasizing that "State legislatures" "will always be" "vigilant" and "jealous guardians of the rights of the citizens against encroachments from the federal government." *The Federalist No. 26*, at 172 (A. Hamilton) (C. Rossiter ed. 1961); *see also The Federalist No. 28*, at 181 (A. Hamilton) (C. Rossiter ed. 1961) ("[T]he State governments will, in all possible contingencies, afford complete security against invasions of the public liberty by the national authority.").

In other words, Missouri's legislature did what States are supposed to when they believe a federal law is unconstitutional. State officials cannot interfere with the operations of the Federal Government, but neither can they help enforce federal laws that they (rightly or wrongly) believe are unconstitutional. The only solution is to do what Missouri did here: refuse to assist with federal enforcement.

As to precedent, the decision to judge Missouri's statute by what its legislative findings *say* rather than what the statute *does* conflicts with *Whole Woman's Health*, which focuses on enjoining the "actions" of defendants, not enjoining a statute directly. A federal court's equitable authority extends only to "enjoin named defendants from taking specified unlawful *actions*." *Whole Woman's Health*, 595 U.S., at 44 (emphasis added). Yet an injunction purporting to "invalidate[ ]" a legislative finding flouts that principle. App.43a. That is because legislative "[f]indings, like

a preamble, . . . are not an operative part of the statute." *Rothe Dev., Inc.* v. *United States Dep't of Def.*, 836 F.3d 57, 66 (CADC 2016) (quotation omitted); *Kingdomware Techs., Inc.* v. *United States*, 579 U.S. 162, 173 (2016). Because a legislative finding "provides no legal authority" to do anything, *Commonwealth* v. *Biden*, 57 F.4th 545, 551 (CA6 2023), a court cannot enjoin an official from enforcing a legislative finding. Here, in contrast, the Eighth Circuit took issue solely with the Act's legislative findings even though it took no issue with the Act's operative provisions. App.10a–12a. The Court even acknowledged that the same statute would be permissible if motivated by a different reason, like a "policy" reason rather than a reason of constitutional interpretation. App.10a.

2. Against all this, the United States pressed (and the Eighth Circuit adopted) a "nullification" theory that is outlandish, false, and "cheapens the gravity of past wrongs." *Whole Woman's Health*, 595 U.S., at 49.

It is outlandish and false because Missouri law does not "nullify" anything. The United States and the Eighth Circuit focused on the provisions that express the legislature's opinion that some federal laws "infringe on the people's right to keep and bear arms as guaranteed by the Second Amendment" and are thus "invalid." Mo. Rev. Stat. § 1.430; App.10a. But that is just an expression of belief that certain laws are unconstitutional. Courts, including this Court, have long described unconstitutional laws as "invalid." *E.g.*, *DeFillippo*, 443 U.S., at 37; *Barr* v. *Am. Ass'n of Pol. Consultants, Inc.*, 591 U.S. 610, 627 n.8 (2020) (plurality op.) ("The term 'invalidate' is a

common judicial shorthand when the Court holds that a particular provision is unlawful and therefore may not be enforced against a plaintiff."); *Marbury* v. *Madison*, 5 U.S. 137, 177 (1803) ("[A]n act of the legislature, repugnant to the constitution, is void."). Indeed, the district court faulted Missouri's legislature for using the term "invalid"—but used that same term to describe Missouri's law. App.43a–44a.

The Eighth Circuit never explained why expressing a belief that a law is "invalid"—*i.e.*, unconstitutional—somehow crosses the Supremacy Clause line. And for good reason: it appears no case like that exists. That explains why the Eighth Circuit felt compelled to rely on a Takings Clause case and isolate this Court's statement that the Constitution "is concerned with means as well as ends." *Horne*, 576 U.S., at 362. *Horne* rejected the argument that a taking of raisins did not implicate the Takings Clause just because "prohibit[ing] the sale of raisins," which "ha[s] the same economic impact," might be valid under a different constitutional provision. *Ibid.* As this Court explained, some clauses focus on "ends"; others focus on "means." *Ibid.* That the Takings Clause focuses on means says nothing about whether the Tenth Amendment does.

As if more were needed, the Eighth Circuit's analysis defeats itself. The Supremacy Clause concerns whether state and federal laws conflict in their "*operation*[ ]." *Washington*, 596 U.S., at 838 (emphasis added) (quoting *McCulloch* v. *Maryland*, 17 U.S. 316, 436 (1819)).[7] But the Eighth Circuit acknowledged

[7] The Eighth Circuit briefly discussed *McCulloch* but mistakenly quoted the U.S. Attorney General's argument in *McCulloch*

that Missouri's law does *not* operate in conflict with federal law. That is why the Eighth Circuit said a statute with the same effect as Missouri's, but passed for a different reason, would be constitutional. App.10a. And it is why the Eighth Circuit characterized Missouri's law as "*purporting to* invalidate federal law" rather than *actually* obstructing federal law. *Ibid.* (emphasis added).[8] Once the court concluded that the *effect* of the Act does not conflict with federal law, that should have been enough.

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rather than the actual opinion—apparently missing that the court reporter summarized the parties' arguments. *Compare* 17 U.S., at 352–62 (U.S. Attorney General's argument), *with id.*, at 400–37 (opinion of the Court).

Regardless, *McCulloch* is inapposite. There, Maryland did not violate the Supremacy Clause merely by expressing a *belief* that the bank was unconstitutional; Maryland violated the Constitution by taxing the United States. Here, in contrast, the Eighth Circuit agreed the effect of Missouri's law is permissible. App.10a. Indeed, Missouri law does not "retard, impede, burden, or in any manner control" the United States or its officers. 17 U.S., at 436. Unlike the power to tax, which is a power to "destroy," *id.*, at 431, the right to withhold assistance falls well within the Tenth Amendment. *See Printz*, 521 U.S. at 919, 935.

[8] The Eighth Circuit's decision is also erroneous because it construed any ambiguity against the statute, contrary to the canon of constitutional avoidance. "[I]f the statute be reasonably susceptible of two interpretations, by one of which it would be unconstitutional and by the other valid, it is our plain duty to adopt that construction which will save the statute from constitutional infirmity." *U.S. ex rel Atty. Gen.* v. *Delaware & Hudson Co*, 213 U.S. 366, 407 (1909). Because Missouri's law can be interpreted as expressing an opinion about whether a statute is constitutional, the Eighth Circuit was required to afford the law that interpretation. Instead, the Eighth Circuit did not even mention the canon of constitutional avoidance.

The Eighth Circuit's ruling is also strange because it faulted Missouri for combining two things that are permissible if done independently. Nobody disputes that state officials can express an opinion that a federal law is unconstitutional. And the Eighth Circuit agreed Missouri can refrain from assisting with federal enforcement. Yet somehow it is a problem if Missouri does both. Why? The Eighth Circuit never explains.

The Federal Government's nullification argument below also "cheapens the gravity of past wrongs." *Whole Woman's Health*, 595 U.S., at 49. Missouri's law is nothing like "what happened in the Jim Crow South," *ibid.*, where state police blockaded schools to prevent compliance with federal desegregation orders. As the Eighth Circuit acknowledged, the *effect* of Missouri's law is permissible. App.10a. Having found that, the court was wrong to equate nullification with the mere expression of a constitutional opinion.

Equally strange is the Eighth Circuit's conclusion that States can exercise Tenth Amendment authority if motivated by policy concerns but not constitutional concerns. That discourages transparency. Moreover, constitutional concerns are *better* justification for withholding state resources. Bound by oaths to the Constitution, state officials and legislatures have "not just the right but the duty to make [their] own informed judgment on the meaning and force of the Constitution." *City of Boerne*, 521 U.S., at 535. Whether the legislature is correct is immaterial. Courts have never been in the business of assessing whether a President or governor is correct when they veto or support legislation on constitutional grounds. Federal courts should treat state legislatures the

same when they make similar decisions within the bounds of their Tenth Amendment authority.

IV. This case raises important questions that merit this Court's attention.

This case has major federalism implications, the Eighth Circuit's decision imposes a constitutional straitjacket on States, and the decision ironically makes it harder to enforce *federal* law.

1. Certiorari is warranted because of several federalism implications.

First are the implications of the Federal Government taking offensive action against a State. This Court regularly hears cases where the United States sues a State, even with no circuit split. *E.g.*, *United States* v. *Washington*, 596 U.S. 832 (2022) (certiorari granted despite no circuit split); *United States* v. *Texas*, 595 U.S. 74 (2021) (dismissed); *Washington* v. *United States*, 584 U.S. 837 (2018); *United States* v. *Texas*, 579 U.S. 547 (2016) (granting certiorari despite admission of no split); *Arizona* v. *United States*, 567 U.S. 387 (2012); *Idaho* v. *United States*, 533 U.S. 262 (2001); *United States* v. *Alaska*, 530 U.S. 1021 (2000) (granting leave to file bill of complaint); *United States* v. *Virginia*, 518 U.S. 515 (1996) (certiorari granted despite no split). Here, there are several splits, so review is especially warranted.

The federalism implications are especially poignant here because the United States is seeking to dismantle a state statute so the Federal Government can access state resources. States alone possess power to control state officers. *Printz*, 521 U.S. at 919, 935. The Federal Government "may neither issue direc-

tives requiring the States to address particular problems, nor command the States' officers, or those of their political subdivisions, to administer or enforce a federal regulatory program." *Id.*, at 935.

Yet the ruling here prevents the people of Missouri from regulating their own state government. And it lets *federal* courts dictate how *state* police expend resources. That stresses dual sovereignty because it is "[t]hrough the structure of its government, and the character of those who exercise government authority, [that] a State defines itself as a sovereign." *Gregory*, 501 U.S., at 460. The Eighth Circuit's holding in effect gives the Federal Government power to "impress into its service—and at no cost to itself—the police officers of the 50 States," *Printz*, 521 U.S., at 922, based solely on disagreements about the reasons a State may choose not to lend its resources to the Federal Government.

"Any time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury." *Maryland* v. *King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers) (quotation omitted). That this injury arrives at the hands of the Federal Government increases the need for this Court's review. If allowed to remain in place, the decision below will undermine the "authority" of States over their "most fundamental political processes." *Alden* v. *Maine*, 527 U.S. 706, 751 (1999).

2. The Eighth Circuit's conclusion that it should judge statutes by what they say rather than what they do imposes a constitutional straitjacket. Under the Eighth Circuit's reasoning, could a State have refused to help enforce the Alien and Sedition Acts on the

ground that the State believed those statutes were unconstitutional? Similarly, President Madison vetoed an 1817 bill to construct roads and canals because he believed it was unconstitutional. *See* Prakash 86. Could a federal court have rescinded the veto on the ground that Madison was wrong? (He took a much narrower view of the Commerce Clause than this Court has.)

Consider modern-day examples. Several governors have vetoed Medicaid expansion. Can a governor veto a bill expanding that important federal program because he or she believes the Affordable Care Act is unconstitutional? Can a state pass a law like Missouri's if its *legislature* does not express an opinion on the constitutionality of federal statutes, but the *governor*, in her signing statement, does? *See* Caleb Turrentine, *Gov. Kay Ivey Signs Alabama Second Amendment Protection Act*, ABC News (April 13, 2022) (governor expressing constitutional concerns about federal statutes);[9] Ala. Code § 36-1-13. Can a federal court block a State from abolishing the death penalty if the legislators say they voted for the bill because they (wrongly) think the death penalty is unconstitutional?

The decision below creates a brave new world of federal interference with Tenth Amendment authority. Never before have courts struck laws simply because the State expresses a belief that some federal statutes are unconstitutional. Courts should not start doing so. The "blast radius" of that novelty is

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[9] https://abc3340.com/news/local/gov-kay-ivey-signs-alabama-second-amendment-protection-act-gun-rights-guns-safety-constitutional-carru-bear-arms-federal-overreach-governor-legislation-senate-bill-2-gerald-allen-

enormous. *Moore* v. *United States*, 602 U.S. 572, 593 (2024).

3. Finally, certiorari is warranted because the ruling below makes it harder to enforce *federal* law. The Act gives Missourians another remedy beyond § 1983 against state officials to vindicate violations of their Second Amendment rights. § 1.460 (imposing liability against the state government when a state official "knowingly deprives a citizen of Missouri of the rights or privileges ensured by Amendment II of the Constitution of the United States"). Because the Eighth Circuit focused on the Act's legislative findings, the Eighth Circuit struck down Missouri's law on its face, eliminating a provision that undisputedly seeks to uphold federal law.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

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January 23, 2025

APPENDIX

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APPENDIX A

United States Court of Appeals

For the Eighth Circuit

No. 23-1457

United States of America,
Plaintiff - Appellee,
v.
State of Missouri; Michael L. Parson, Governor of the State of Missouri, in his official capacity; Andrew Bailey, Attorney General of the State of Missouri, in his official capacity,
Defendants - Appellants.

- - - - - - - - - - - - - - - - - - -

Missouri Firearms Coalition; American Firearms Association; Iowa Gun Owners; Ohio Gun Owners; Minnesota Gun Rights; Georgia Gun Owners; Wyoming Gun Owners,
Amici Curiae - *Amici on Behalf of Appellant(s)*,

Gun Owners of America, Inc.; Gun Owners Foundation; Gun Owners of California; Heller Foundation; America's Future; DownsizeDC.org; Downsize DC Foundation; Conservative Legal Defense and Education Fund; Virginia Delegate David LaRock; The Freedom Center of Missouri,
Amici on Behalf of Appellant(s),

Brady Center to Prevent Gun Violence; Everytown for Gun Safety; March For Our Lives; Giffords Law Center to Prevent Gun Violence; Missouri Coalition Against Domestic and Sexual Violence; Jackson County Missouri; St. Louis County Missouri,

Amici on Behalf of Appellee(s).

Appeal from United States District Court for the Western District of Missouri - Jefferson City

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Submitted: February 23, 2024
Filed: August 26, 2024

Before LOKEN, COLLOTON,[1] and KELLY, Circuit Judges.

COLLOTON, Circuit Judge.

Missouri's Second Amendment Preservation Act classifies various federal laws regulating firearms as "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." The Act declares that these federal laws are "invalid to this state," "shall not

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[1] Judge Colloton became chief judge of the circuit on March 11, 2024. *See* 28 U.S.C. § 45(a)(1).

be recognized by this state," and "shall be specifically rejected by this state."

The United States sued the State of Missouri, the governor, and the attorney general, alleging that the Act violates the Supremacy Clause of the Constitution of the United States. The district court[2] denied Missouri's motions to dismiss for lack of standing and failure to state a claim, granted the motion of the United States for summary judgment, and enjoined implementation and enforcement of the Act. On this appeal by the State, we agree that the United States has standing to sue. Because the Act purports to invalidate federal law in violation of the Supremacy Clause, we affirm the judgment.

I.

In 2021, the State of Missouri enacted a law entitled, "Second Amendment Preservation Act." Mo. Rev. Stat. §§ 1.410-1.485 (2021). The Act states:

> 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

[2] The Honorable Brian C. Wimes, United States District Judge for the Western District of Missouri.

> 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.

Id. § 1.420.

The Act declares that these federal laws "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. The Act imposes a "duty" on "the courts and law enforcement agencies of this state to protect the rights of law-abiding citizens . . . from the infringements defined under section 1.420." *Id.* 1.440. The Act also mandates that "[n]o 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" a federal law that "infring[es] on the right to keep and bear arms." *Id.* § 1.450.

Private persons may sue to enforce the Act. The Act creates a cause of action against "[a]ny political subdivision or law enforcement agency" that either (1) "employs a law enforcement officer who acts knowingly . . .

to violate the provisions of section 1.450," or (2) "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 . . . [e]nforced," "attempted to enforce," or "[g]iven material aid and support . . . to enforce any of the infringements identified in section 1.420." *Id.* §§ 1.460.1, 1.470.1. Each violation of the Act is punishable by a $50,000 penalty. *Id.* Prevailing parties, "other than the state of Missouri or any political subdivision of the state," may recover reasonable attorney's fees and costs. *Id.* §§ 1.460.2, 1.470.3.

In 2022, the United States sued Missouri to enjoin implementation and enforcement of the Act. The United States alleged that the Act impeded the federal government's ability to enforce federal law by causing state officials to withdraw from joint task forces with federal law enforcement, by disrupting information sharing between state and federal officers, and by causing confusion about the status of federal firearm regulations in the State.

Missouri moved to dismiss. First, the State asserted that the United States lacked standing to sue Missouri because the law is enforced by private citizens rather than state actors. Second, the State argued that the United States failed to state a claim because the Act is a constitutional exercise of state power under *Printz v. United States*, 521 U.S. 898 (1997).

The district court ruled that the United States has standing because the federal government was injured by the withdrawal of state resources, and that injury

was attributable to the State. On the merits, the district court ruled that the Act violates the Supremacy Clause because it purports to invalidate federal law. The district court enjoined "any and all implementation and enforcement" of the Act. We review the district court's rulings *de novo*. *Young v. City of Little Rock*, 249 F.3d 730, 734 (8th Cir. 2001).

II.

A.

We first consider whether the United States has standing to challenge the Act. "[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 demonstrate Article III standing, a plaintiff "must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016).

"To establish injury in fact, a plaintiff must show that he or she suffered 'an invasion of a legally protected interest' that is 'concrete and particularized' and 'actual or imminent, not conjectural or hypothetical.'" *Id.* at 339 (quoting *Defs. of Wildlife*, 504 U.S. at 560). The United States has a legally protected interest in enforcing federal law. *See United States v. Colo. Sup. Ct.*, 87 F.3d 1161, 1165 (10th Cir. 1996); *cf. Crow Indian Tribe v. United States*, 965 F.3d 662, 676 (9th Cir. 2020). The United States presented uncontroverted evidence that implementation of the Act impaired that interest, because state officials withdrew resources and manpower that further the enforcement of federal law. The federal government's injury was

thus "concrete and particularized" and "actual or imminent." *Colo. Sup. Ct.*, 87 F.3d at 1165.

Missouri argues that the federal government's interest is not legally protected because the United States is not entitled to the State's assistance with the enforcement of federal law. *See Printz*, 521 U.S. at 935. That argument confuses standing with the merits of the dispute. To say that the United States was injured by the withdrawal of state assistance "is not to say that [it] is entitled" to that assistance. *McDaniel v. Precythe*, 897 F.3d 946, 950 (8th Cir. 2018). A "plaintiff can have standing . . . even though the interest would not be protected by the law in that case." *In re Special Grand Jury 89-2*, 450 F.3d 1159, 1172 (10th Cir. 2006); *see Cottrell v. Alcon Lab'ys*, 874 F.3d 154, 164 (3d Cir. 2017). Interference with the federal government's interest in enforcing federal law is sufficient to establish that the Act's implementation injured the United States. Whether the United States is entitled to relief from that injury is a question on the merits of the dispute.

The injury of the United States is both traceable to Missouri and redressable by a favorable decision. The Act makes it unlawful for state officials 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" in the Act. Mo. Rev. Stat. §§ 1.1450-1.1460. To comply with the Act, state officials have withdrawn resources that were devoted to assisting federal law enforcement. An injunction enjoining the State from implementing the Act would prevent state officials from treating federal law as invalid and

withdrawing from participation in federal law enforcement on that basis.

Missouri argues that the United States lacks standing to challenge the Act's purported invalidation of federal law because that portion of the Act "has no means of enforcement." *California v. Texas*, 593 U.S. 659, 669 (2021). The State relies on the Supreme Court of Missouri's description of sections 1.410, 1.420, 1.430, and 1.440 of the Act as "legislative findings and declarations." *City of St. Louis v. State*, 643 S.W.3d 295, 297 (Mo. 2022). The United States responds that this description is dicta because it appears in a section of the court's opinion titled, "Factual and Procedural Background." Whatever the status of the cited language, we fail to see how the state court's decision renders the Act's purported invalidation of federal law unenforceable. The supreme court explained that the "five remaining sections [of the Act] comprise the substantive provisions to *enforce* these legislative declarations." *Id.* (emphasis added).

Missouri also argues that the federal government's injury is not redressable by any named defendant because the Act is enforced only by private-citizen suits. A federal court cannot enjoin private citizens who are not parties to the case on the grounds that they may someday file a lawsuit under the Act. *See Whole Woman's Health v. Jackson*, 595 U.S. 30, 44 (2021); *cf. Digit. Recognition Network, Inc. v. Hutchinson*, 803 F.3d 952, 958 (8th Cir. 2015). But "[s]o long as a state official is giving effect to a state statute in a manner that allegedly injures a plaintiff and violates [the plaintiff's] constitutional rights, an action to enjoin implementation of the statute . . . is available against the state official." *McDaniel*, 897 F.3d at 952. State

officials have a duty under the Act to refrain from enforcing certain federal firearms laws. These officials give effect to the Act by withdrawing from participation in federal law enforcement activities, and a favorable decision would enjoin them from withdrawing on that basis. The requested injunction would redress the federal government's injury. The United States thus has standing.

B.

The Supremacy Clause states that federal law is "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. "By this declaration, the states are prohibited from passing any acts which shall be repugnant to a law of the United States." *McCulloch v. Maryland*, 7 U.S. (4 Wheat.) 316, 361 (1819). The "Second Amendment Preservation Act" states that certain federal laws are "invalid to this state," Mo. Rev. Stat. § 1.430, but a State cannot invalidate federal law to itself. Missouri does not seriously contest these bedrock principles of our constitutional structure. The State instead advances two arguments.

First, the State argues that the United States cannot sue to enforce the Supremacy Clause because it lacks a cause of action. While there is no implied right of action under the Supremacy Clause, there is an equitable tradition of suits to enjoin unconstitutional actions by state actors. *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 326-27 (2015). Based on that equitable tradition, the United States has sued in other cases to enjoin a state law's implementation and enforcement or for other appropriate relief. *See, e.g.*,

United States v. Washington, 596 U.S. 832, 837 (2022); *United States v. Minnesota*, 270 U.S. 181, 194 (1926); *Sanitary Dist. of Chi. v. United States*, 266 U.S. 405, 425-26 (1925). We see no reason why the United States cannot proceed similarly in this case.

Second, Missouri contends that the Act is constitutional because the State may constitutionally withdraw the authority of state officers to enforce federal law. The State argues that the *reason* why it withdrew its authority—*i.e.*, because the State declared federal law invalid—is immaterial.

That Missouri may lawfully withhold its assistance from federal law enforcement, however, does not mean that the State may do so by purporting to invalidate federal law. In this context, as in others, the Constitution "is concerned with means as well as ends." *Horne v. Dep't of Agric.*, 576 U.S. 350, 362 (2015). Missouri has the power to withhold state assistance, "but the means it uses to achieve its ends must be 'consist[ent] with the letter and spirit of the constitution.'" *Id.* (quoting *McCulloch*, 7 U.S. (4 Wheat.) at 421) (alteration in original). Missouri's assertion that federal laws regulating firearms are "invalid to this State" is inconsistent with both. If the State prefers as a matter of policy to discontinue assistance with the enforcement of *valid* federal firearms laws, then it may do so by other means that are lawful, and assume political accountability for that decision.

Because Missouri's attempt to invalidate federal law is unconstitutional, we must determine whether this portion of the law is severable from the rest of the Act. Whether one provision of a statute is severable from the remainder is a question of state law. *Leavitt*

v. Jane L., 518 U.S. 137, 139 (1996). Under Missouri law, the statute is not severable if "the valid provisions of the statute are so essentially and inseparably connected with, and so dependent upon, the void provision that it cannot be presumed the legislature would have enacted the valid provisions without the void one." Mo. Rev. Stat. § 1.140. The Act itself states:

> 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.

Id. § 1.485.

We conclude that the law is not severable because the entire Act is founded on the invalidity of federal law. Section 1.410 purports to limit the supremacy of federal law by stating that federal "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." Section 1.420 lists the federal laws that "shall be considered infringements on the people's right to keep and bear arms," and section 1.430 declares that those laws are "invalid to this state." Because these federal laws are "infringements" and thus "invalid to this state," the Act imposes a "duty" upon "law enforcement agencies of this state

to protect the rights of law-abiding citizens to keep and bear arms." *Id.* §§ 1.420-1.440.

The Act's command that state law enforcement officers must not enforce "invalid" federal law, and the Act's creation of causes of action against state entities that employ officers who do so, are means to "enforce" sections 1.410, 1.420, 1.430, and 1.440. *City of St. Louis*, 643 S.W.3d at 297. The court thus cannot give effect to any provision of the Act without enforcing Missouri's attempt to invalidate federal law. Accordingly, the district court's order enjoining state officials from implementing and enforcing the Act was proper. *See Missouri v. United States*, 144 S. Ct. 7, 7 (2023) (statement of Gorsuch, J.).

The judgment of the district court is affirmed.

APPENDIX B

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[3] 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").

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.

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[3] 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).

#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 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 "infringe-

ments," 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

APPENDIX C

Supreme Court of the United States
Office of the Clerk
Washington, DC 20543-0001

Scott S. Harris
Clerk of the Court
(202) 479-3011

November 14, 2024

Clerk
United States Court of Appeals
for the Eighth Circuit
Thomas F. Eagleton Courthouse
111 S. 10th Street, Room 24.329
St. Louis, MO 63102-1125

Re: Missouri, et al.
v. United States
Application No. 24A476
(Your No. 23-1457)

Dear Clerk:

The application for an extension of time within which to file a petition for a writ of certiorari in the above-entitled case has been presented to Justice Kavanaugh, who on November 14, 2024, extended the time to and including January 23, 2025.

This letter has been sent to those designated on the attached notification list.

Sincerely,

Scott S. Harris, Clerk
by
Redmond K. Barnes
Case Analyst

APPENDIX D

SUPREME COURT OF THE UNITED STATES

No. 23A296

MISSOURI, ET AL. *v.* UNITED STATES
ON APPLICATION FOR STAY
[October 20, 2023]

The application for stay presented to JUSTICE KAVANAUGH and by him referred to the Court is denied.

JUSTICE THOMAS would grant the application for stay.

Statement of JUSTICE GORSUCH, with whom JUSTICE ALITO joins, respecting the denial of the application for stay.

With the understanding that the district court "prohibited" only "implementation and enforcement" of H. B. 85 by the State of "Missouri and its officers, agents, and employees" and "any others in active concert with such individuals," App. to Emergency Application 29a, I agree with the denial of the application for a stay under the present circumstances. An injunction purporting to bind private parties not before the district court or the "challenged" provisions "themselves," however, would be inconsistent with the "equitable

powers of federal courts." *Whole Woman's Health* v. *Jackson*, 595 U. S. 30, 44 (2021).

APPENDIX E

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

APPENDIX F

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.

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.

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 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 or chapter 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 chapter 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.