No. 23A296

IN THE SUPREME COURT OF THE UNITED STATES

STATE OF MISSOURI, ET AL., APPLICANTS

v.

UNITED STATES OF AMERICA

RESPONSE IN OPPOSITION TO APPLICATION FOR A STAY OF THE INJUNCTION ISSUED BY THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF MISSOURI

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The Solicitor General, on behalf of the United States, respectfully submits this response in opposition to the application for a stay of the injunction entered by the United States District Court for the Western District of Missouri.

In 2021, Missouri enacted the Second Amendment Preservation Act (Act), Mo. Rev. Stat. §§ 1.410-1.485. The Act declares several broad categories of federal laws -- including laws taxing and requiring the registration of certain dangerous and unusual weapons, laws requiring firearms dealers to keep records, and laws disarming domestic abusers -- to be "infringements on the people's right to keep and bear arms." Id. § 1.420. The Act provides that those 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 makes it "the duty of the courts and law enforcement agencies of this state to protect" Missourians from those federal laws. Id. § 1.440. It also provides that "[n]o entity or person" -- a term that the district court interpreted to include federal officers -- "shall have the authority to enforce or attempt to enforce" those laws. Id. § 1.450. State agencies and political subdivisions that employ officers who violate the Act -- including deputized state officers who are "acting under the color of * * * federal law" -- are subject to suit and to "a civil penalty of fifty thousand dollars per occurrence." Id. § 1.460.1. And the Act disqualifies any person from state employment if, as a federal employee, he has ever "[e]nforced," "attempted to enforce," or gave "material aid and support" to the enforcement of the relevant federal laws. Id. § 1.470.1.

The district court issued a permanent injunction prohibiting Missouri from implementing and enforcing the Act. See Appl. App. 6a-29a. The Eighth Circuit denied Missouri's application for a stay pending appeal. Id. at 1a. Missouri now seeks a stay pending appeal and certiorari, arguing that the United States lacks standing and that the Act is constitutional.

This Court should deny Missouri's application. The United States has Article III standing because the Act directs state officers to treat federal firearms laws as invalid and to protect Missourians against their enforcement, because the Act purports to

regulate and punish federal employees who enforce federal firearms laws, and because the Act has caused the withdrawal of critical law-enforcement assistance that state and local agencies previously provided to the United States. On the merits, the Act is patently unconstitutional because the Supremacy Clause precludes a State from nullifying or interposing obstacles to federal law, because the Act is preempted by the federal laws that it purports to invalidate, and because the doctrine of intergovernmental immunity precludes Missouri from regulating the United States and from discriminating against the federal government by refusing to hire its former employees.

Missouri attempts to defend the Act (Appl. 2) by portraying its central nullification provisions as "purely declaratory" and by arguing that the remaining provisions simply exercise the State's prerogative "not to assist with federal enforcement." But those assertions ignore what the Act actually says and does. And contrary to the State's repeated assertions, the Missouri Supreme Court has not adopted the State's atextual interpretation of the Act. The statement the State quotes appears in the background section of an opinion that did not address the Act's meaning, and that statement does not support the State's reading in any event.

Missouri also has not shown -- as it must in order to obtain a stay -- that a decision affirming the district court's injunction would warrant this Court's review. Missouri does not seriously deny that, accepting the district court's interpretation of the

Act, the United States has Article III standing and the Act violates the Constitution. Missouri instead principally argues that the district court misinterpreted the Act. But this Court ordinarily grants review only to consider federal questions, not to reexamine lower courts' interpretations of state statutes.

Nor has Missouri shown that it faces irreparable harm. It does not suggest that the injunction inflicts any concrete injury on the State; instead, it relies almost entirely on the abstract injury a State suffers when the implementation of one of its statutes is enjoined. But that interest carries little weight where, as here, the statute is an obviously unconstitutional attempt to nullify federal law. On the other side of the ledger, the Act has caused serious, tangible harms to the United States and to the public. By disqualifying federal employees from state employment for enforcing certain federal laws, the Act seeks to undermine their willingness to enforce those laws. More broadly, the Act has severely disrupted the federal government's enforcement of federal law in Missouri, including its ability to apprehend dangerous criminals. To mention just one example, Missouri law-enforcement officers have in some cases agreed to participate in joint federal-state fugitive operations, only to disengage at the scene upon the discovery of a firearm -- thereby jeopardizing the lives and safety of the other members of the task force and potentially of the public.

The Missouri Legislature is free to express its opinions about the Second Amendment, and it is also free to prohibit state and local officials from assisting in the enforcement of federal law. But it is not free to purport to nullify federal statutes; to direct state officials and courts to treat those statutes as invalid and to protect against their enforcement; or to regulate and discriminate against federal officials enforcing those statutes. This Court should not grant extraordinary emergency relief to allow Missouri to resume implementation of that nullificationist scheme.

STATEMENT

A. Background

1. In June 2021, the Missouri General Assembly enacted the Second Amendment Preservation Act, Mo. Rev. Stat. §§ 1.410-1.485. The Act begins with a series of "find[ings]" and "declar[ations]." Id. § 1.410.2. It declares, among other things, that Missouri retains the power to "judge for itself" the constitutionality of federal statutes; to declare federal laws "unauthoritative, void, and of no force"; and to determine the proper "redress" for federal "infractions" of the Constitution. Id. § 1.410.2(4)-(5). Those declarations paraphrase the 1798 Virginia and Kentucky Resolutions, whose claims of state authority to invalidate federal law were invoked by proponents of nullification and interposition in the 19th century and by States resisting desegregation in the 20th century. See Encyclopedia of the American Constitution 1832-1833 (Leonard W. Levy et al. eds., 2000).

Section 1.420 of the Missouri statute provides that certain "federal acts" "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." Mo. Rev. Stat. § 1.420. Those federal acts include (1) "[a]ny tax" that "might reasonably be expected to create a chilling effect on the purchase or ownership" of firearms; (2) "[a]ny registration or tracking of firearms"; (3) "[a]ny registration or tracking of the ownership of firearms"; (4) "[a]ny act forbidding the possession" of a firearm "by law-abiding citizens"; and (5) "[a]ny act ordering the confiscation of firearms * * * from law-abiding citizens." Ibid. The Act defines "law-abiding citizen" to mean "a person who is not * * * precluded under state law from possessing a firearm." Id. § 1.480.1 (emphasis added).

The Act then declares that the federal laws described in Section 1.420 "shall be invalid to this state, shall not be recognized by this state, shall be specifically rejected by this state, and shall not be enforced by this state." Mo. Rev. Stat. § 1.430 (emphasis omitted). The Act also makes it "the duty of the courts and law enforcement agencies of this state to protect" Missourians against the federal laws "defined under section 1.420." Id. § 1.440.

The Act additionally provides that "[n]o entity or person * * * shall have the authority to enforce or attempt to enforce

any federal acts" listed in Section 1.420. Mo. Rev. Stat. § 1.450. If a state law-enforcement agency or political subdivision employs a law-enforcement officer who knowingly enforces or attempts to enforce such a federal statute, an injured party may sue the agency or subdivision for damages, equitable relief, and "a civil penalty of fifty thousand dollars per occurrence." Id. § 1.460.1. That penalty applies even with respect to state officers who have been deputized to act "under the color of * * * federal law." Ibid.; see App., infra, 5a, 22a, 24a (describing examples of such deputization arrangements in Missouri).

The Act also prohibits state law-enforcement agencies and political subdivisions from employing any person who, as a federal official or employee, has ever "[e]nforced," "attempted to enforce," or "[g]iven material aid and support" to the enforcement of the specified federal laws. Mo. Rev. Stat. § 1.470.1. An agency or subdivision that knowingly hires such a former federal employee is "subject to a civil penalty of fifty thousand dollars per employee hired," ibid., and "[a]ny person residing in the jurisdiction" may sue to recover that penalty, id. § 1.470.2.

2. The Missouri statute does not enumerate the federal laws that it purports to invalidate. But its provisions encompass a broad range of federal statutes and implementing regulations -- including, most importantly, the National Firearms Act of 1934 (National Firearms Act), 26 U.S.C. 5801 et seq., and the Gun Control Act of 1968 (Gun Control Act), 18 U.S.C. 921 et seq.

The National Firearms Act applies to certain dangerous and unusual weapons, such as machineguns, short-barreled rifles, and sawed-off shotguns. See 26 U.S.C. 5845(a). The statute taxes the manufacture and transfer of such weapons, see 26 U.S.C. 5801, 5811, 5821, and requires their registration, see 26 U.S.C. 5841. This Court has recognized that those restrictions comply with the Second Amendment. See District of Columbia v. Heller, 554 U.S. 570, 624-625 (2008); United States v. Miller, 307 U.S. 174, 178 (1939). But the Missouri statute purports to invalidate "[a]ny tax" that "might reasonably be expected to create a chilling effect on the purchase or ownership" of firearms, Mo. Rev. Stat. § 1.420(1), and "[a]ny registration" of firearms, id. § 1.420(2).

The Gun Control Act regulates firearms manufacturers, importers, and dealers. See 18 U.S.C. 923. Licensed manufacturers and importers must engrave serial numbers on their firearms. See 18 U.S.C. 923(i). Licensed manufacturers, importers, and dealers must also maintain records of firearms transactions and must report the loss or theft of any firearms. See 18 U.S.C. 923(g). This Court has indicated that the Second Amendment permits such "conditions and qualifications on the commercial sale of arms." Heller, 554 U.S. at 627. Yet the Missouri statute purports to invalidate "[a]ny registration or tracking" of "firearms" or of "the ownership of firearms." Mo. Rev. Stat. § 1.420(2)-(3).

The Gun Control Act also prohibits the possession of firearms by certain categories of dangerous individuals, including felons,

fugitives, drug addicts, persons who have been committed to mental institutions, and domestic abusers. See 18 U.S.C. 922(g). The Missouri statute, however, purports to invalidate those provisions to the extent they prohibit the possession of firearms by "a person who is not * * * precluded under state law from possessing a firearm." Mo. Rev. Stat. § 1.480.1; see id. § 1.420(4). For instance, the Missouri statute purports to invalidate the federal provisions disarming individuals who are subject to domestic-violence protective orders, see 18 U.S.C. 922(g)(8), and individuals who have been convicted of misdemeanor crimes of domestic violence, see 18 U.S.C. 922(g)(9), because Missouri has not enacted corresponding state restrictions, see App., infra, 10a.[1]

3. Since the Missouri statute took effect in August 2021, see Mo. Rev. Stat. § 1.480.5, it has imposed significant harms on the federal government. The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), for example, reports that many state and local officers have withdrawn from joint federal-state task forces, which have been "critical to ATF's law enforcement mission of protecting Missouri communities from violent crimes." App., infra, 5a; see id. at 5a-6a. ATF also reports that many state law-enforcement entities have stopped entering data into the National Integrated Ballistic Information Network, an information-

[1] This Court is considering the constitutionality of the provision disarming persons subject to domestic-violence protective orders in United States v. Rahimi, cert. granted, 143 S. Ct. 2688 (2023) (No. 22-915) (oral argument scheduled for Nov. 7, 2023).

sharing effort that has helped identify hundreds of suspects and generate thousands of leads for violent-crime investigations in Missouri. Id. at 6a-7a.

The U.S. Marshals Service similarly reports that many state and local law-enforcement officers have stopped cooperating with federal efforts to apprehend fugitives. App., infra, 17a-19a, 24a-27a. Some state and local officers have initially agreed to participate in fugitive operations, but then disengaged at the scene upon the discovery of a firearm. Id. at 26a. Those on-the-spot withdrawals have created "grave security issues * * * for other task force members." Ibid. And in one case, a state police officer who had made a traffic stop knowingly released a federal fugitive rather than risk violating the Act. Id. at 25a-26a.

The Act affects federal employees as well. "By making involvement in federal firearm enforcement a disqualifying characteristic for certain jobs within the State of Missouri," the Act "seeks to undermine current federal officers' willingness to enforce federal firearm laws." Appl. App. 68a. The Act also "makes becoming a federal officer less attractive by limiting those officers' future job prospects." Ibid.

B. Proceedings Below

1. In February 2022, after several months of experience confirming the Act's harmful effects on the federal government, the United States sued the State of Missouri, the Governor of

Missouri, and the Missouri Attorney General (collectively Missouri) in federal district court. See Appl. App. 6a. The United States sought declaratory and injunctive relief preventing Missouri from implementing and enforcing the Act. See id. at 7a.

In March 2023, the district court denied Missouri's motions to dismiss and granted the United States' motion for summary judgment. See Appl. App. 6a-29a. The court first rejected Missouri's argument that the United States lacked Article III standing. See id. at 7a-12a. The court determined that the United States had experienced multiple forms of injury, including "interfere[nce] with the federal government's operations," "interference with the function of federal firearms regulations," and "discrimination against federal employees." Id. at 10a. The court also determined that Missouri had caused the injury and that a judgment against Missouri would redress the injury. Id. at 10a-12a. The court emphasized that the Act allows "'any person'" -- including "Missouri's Attorney General on the State's behalf" -- to sue to enforce the Act's provisions. Id. at 11a (citation omitted). The court added that Missouri law "authorizes the Defendants' enforcement of [the Act] by other means," such as the removal of state officials who fail to comply with the Act's directives. Ibid.

Turning to the merits, the district court held the Act unconstitutional on three grounds. See Appl. App. 18a-28a. First, the court determined that the Act violates the Supremacy Clause by purporting to invalidate federal statutes. See id. at 19a-21a.

Second, the court determined that the Act conflicts with, and thus is preempted by, the National Firearms Act and Gun Control Act. See id. at 21a-24a. Third, the court determined that the Act violates the doctrine of intergovernmental immunity by, among other things, "regulat[ing] the United States directly" and "discriminat[ing] against federal authority." Id. at 27a; see id. at 26a-28a.

Applying state-law severability principles, the district court held the Act invalid in its entirety. Appl. App. 24a-25a, 28a. The court issued an injunction prohibiting "Missouri and its officers, agents, and employees" from "implement[ing] and enforc[ing]" the Act. Id. at 29a.

2. Shortly after issuing that decision, the district court denied Missouri's motion for a stay pending appeal, but granted an administrative stay. Appl. App. 4a-5a. The court stated that the "temporary administrative stay shall remain in place until the Eighth Circuit determines whether [the order] should be stayed pending appeal." Id. at 5a.

In September 2023, the Eighth Circuit issued an order denying Missouri's motion for a stay pending appeal. Appl. App. 1a. As a result of that action, the district court's administrative stay expired and the injunction took effect.

ARGUMENT

An applicant for a stay pending appeal and certiorari must establish (1) a "fair prospect" of success on the merits, (2) a

"reasonable probability" that the Court would grant review in the first place, and (3) that it "would likely suffer irreparable harm absent the stay" and that "the equities" otherwise support relief. Merrill v. Milligan, 142 S. Ct. 879, 880 (2022) (Kavanaugh, J., concurring); see Hollingsworth v. Perry, 558 U.S. 183, 190 (2010) (per curiam). Missouri has failed to satisfy any of those requirements.

I. MISSOURI HAS FAILED TO ESTABLISH A LIKELIHOOD OF SUCCESS ON THE MERITS

Missouri argues (Appl. 19-36) that the district court erred in holding that the United States has Article III standing and that the Act is unconstitutional. Missouri is wrong on both points.

A. The United States Has Article III Standing

1. To establish Article III standing, a plaintiff must show that it has suffered an injury in fact that was likely caused by the challenged action and that would likely be redressed by judicial relief. See TransUnion LLC v. Ramirez, 141 S. Ct. 2190, 2203 (2021). The United States has established Article III standing in at least three ways.

First, the United States has Article III standing because Missouri has sought to invalidate federal law and to impede its enforcement. The Act provides that the federal laws identified in Section 1.420 "shall be invalid to this state, shall not be recognized by this state, shall be specifically rejected by this

state, and shall not be enforced by this state." Mo. Rev. Stat. § 1.430. The Act thus requires state officials to treat those federal firearms laws as invalid. The Act also directs "law enforcement agencies of this state" to "protect" Missourians against the federal laws identified in Section 1.420. Id. § 1.440. As the district court observed, that provision imposes "an affirmative duty to effectuate an obstacle to federal firearms enforcement within the state." Appl. App. 27a; see ibid. ("duty on * * * state law enforcement to obstruct the enforcement of federal firearms regulations").

Second, the United States has Article III standing because the Act purports to regulate the United States and its employees. The Act provides that "[n]o entity or person * * * shall have the authority to enforce or attempt to enforce" the federal laws identified in Section 1.420. Mo. Rev. Stat. § 1.450. As the district court observed, the plain text of that provision purports to "regulate the United States [and] federal law enforcement directly." Appl. App. 27a. The Act enforces that regulation by prohibiting political subdivisions and law-enforcement agencies from employing former federal employees who have enforced, attempted to enforce, or assisted in the enforcement of the federal laws identified in Section 1.420. Id. § 1.470.1. Those provisions discourage current federal officials from enforcing federal law and impair the federal government's efforts to recruit new law-enforcement officers. Appl. App. 68a.

Finally, the United States has Article III standing because the Act disrupts cooperation between federal and state agencies. As detailed above, many state and local law-enforcement agencies have withdrawn from or restricted their participation in joint federal-state task forces, reducing the resources for federal law enforcement. See pp. 9-10, supra. Many state and local law-enforcement agencies have also stopped sharing information with their federal counterparts. See ibid. Just as a State has standing to challenge the federal government's withdrawal of federal funding, see, e.g., Department of Commerce v. New York, 139 S. Ct. 2551, 2565 (2019), the United States has standing to challenge a law that has caused Missouri's withdrawal of state assistance. Missouri argues (Appl. 30) that the anticommandeering doctrine entitles it to withhold that assistance, but that argument concerns the merits, not standing. See Warth v. Seldin, 422 U.S. 490, 500 (1975) ("[S]tanding in no way depends on the merits of the plaintiff's contention that particular conduct is illegal.").

2. Missouri's contrary arguments are incorrect. Missouri argues (Appl. 28) that the United States lacks Article III standing to sue the State because the Act can be enforced only "by private citizens," "not by any state official." But the Act, by its plain terms, directs state officials to treat certain federal laws as invalid, see Mo. Rev. Stat. § 1.430; to protect against the enforcement of those federal laws, see id. § 1.440; and to refrain from hiring former federal employees who have enforced those laws,

see id. § 1.470.1. State officials' compliance with those directives causes injury to the United States, and a judicial order preventing compliance would redress that injury.

To be sure, the Act also provides that "[a]ny person" may sue state law-enforcement agencies and political subdivisions for failure to comply with the Act's directives. Mo. Rev. Stat. §§ 1.460.1, 1.470.1. But the United States suffers an Article III injury when Missouri itself complies with the Act -- e.g., when Missouri itself treats federal laws as invalid, obstructs their enforcement, or refuses to hire former federal employees who enforced them -- and not just when private citizens sue Missouri entities for the failure to comply with the Act. The United States accordingly may sue Missouri to prevent such compliance. See Alden v. Maine, 527 U.S. 706, 755 (1999) ("In ratifying the Constitution, the States consented to suits brought by other States or by the Federal Government."). In addition, the district court explained that the statutory term "'[a]ny person'" "includes Missouri's Attorney General on the State's behalf." Appl. App. 11a (citation omitted). Thus, contrary to Missouri's assertion (Appl. 28), the Attorney General may sue to collect civil penalties under the Act -- and the United States may sue to prevent him from doing so.

Missouri cites (Appl. 23) this Court's decision in California v. Texas, 141 S. Ct. 2104 (2021), which held that a party lacks standing to challenge "an unenforceable statutory provision." Id. at 2116. But that uncontroversial principle has no relevance here.

The Act's provisions are plainly being implemented by Missouri in a manner that injures the United States, and are plainly enforceable in other ways -- including by civil penalties of up to $50,000, see Mo. Rev. Stat. § 1.460.1, and by disqualification of certain former federal employees from state employment, see id. § 1.470.1.

Missouri also invokes the principle that "federal courts may only 'enjoin named defendants from taking specified unlawful actions,' not 'enjoin challenged laws themselves.'" Appl. 2-3 (quoting Whole Woman's Health v. Jackson, 595 U.S. 30, 44 (2021)). But a federal court can redress the United States' injuries by enjoining the State of Missouri and its officials from taking specified unlawful actions. For example, the district court's injunction prohibits Missouri officials from treating federal laws as invalid in the course of performing their functions, see Mo. Rev. Stat. § 1.430; from affirmatively obstructing the enforcement of federal law, see id. § 1.440; and from discriminating against former federal employees in making hiring decisions, see id. § 1.470. The United States did not ask the district court to enjoin the challenged Missouri statute itself, and the court did not do so. To the contrary, the court enjoined defendants from "implement[ing] and enforc[ing]" the Act. Appl. App. 29a (emphasis added).

B. The Act Violates The Constitution

1. The district court also reached the correct decision on the merits: The Missouri statute is patently unconstitutional.

The Supremacy Clause makes federal law "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. As this Court has long recognized, the Supremacy Clause precludes a State from nullifying federal law or interposing obstacles to the enforcement of federal law. See, e.g., United States v. Louisiana, 364 U.S. 500, 501 (1960) ("[I]nterposition * * * is illegal defiance of constitutional authority.") (citation omitted); United States v. Reynolds, 235 U.S. 133, 149 (1914) ("[S]tate statutes" that "nullify" federal statutes "must fail."); Anderson v. Carkins, 135 U.S. 483, 490 (1890) ("The law of Congress is paramount; it cannot be nullified by direct act of any State, nor the scope and effect of its provisions set at naught indirectly."). The Missouri statute violates those fundamental principles by directing state officials to treat certain federal laws as invalid, see Mo. Rev. Stat. § 1.430; requiring them to protect Missourians from the enforcement of those federal laws, see id. § 1.440; imposing civil penalties when deputized state officials enforce those laws, see id. § 1.460.1; and punishing federal employees who enforce those federal laws by disqualifying them from state employment, see id. § 1.470.1.

Although those elementary principles suffice to establish the Act's unconstitutionality, this Court could also view this case through the lens of preemption. "[W]hen federal and state law conflict, federal law prevails and state law is preempted." Murphy v. NCAA, 138 S. Ct. 1461, 1476 (2018). The Missouri statute conflicts with -- and thus is preempted by -- the National Firearms Act, the Gun Control Act, and the other federal laws that it purports to invalidate. The National Firearms Act taxes and requires the registration of certain dangerous and unusual firearms, see pp. 7-8, supra; the Missouri statute conflicts with those requirements by purporting to invalidate "[a]ny tax" that "might reasonably be expected to create a chilling effect on the purchase or ownership" of firearms, Mo. Rev. Stat. § 1.420(1), and "[a]ny registration" of firearms, id. § 1.420(2). The Gun Control Act requires licensed manufacturers, importers, and dealers to engrave serial numbers on firearms and to maintain records of firearms transactions, see p. 8, supra; the Missouri statute conflicts with those requirements by purporting to invalidate "[a]ny registration or tracking" of "firearms" or of "the ownership of firearms," Mo. Rev. Stat. § 1.420(2)-(3). The Gun Control Act also forbids the possession of firearms by certain dangerous categories of individuals, see pp. 8-9, supra; the Missouri statute conflicts with those provisions by purporting to invalidate federal possession restrictions that go beyond state law, see Mo. Rev. Stat. § 1.420(4)-(5).

Finally, this Court could view this case through the lens of the doctrine of intergovernmental immunity. Under that principle, a State has "no power * * * to retard, impede, burden, or in any manner control, the operations of the constitutional laws enacted by [C]ongress." McCulloch v. Maryland, 4 Wheat. 316, 436 (1819) (Marshall, C.J.). More specifically, that doctrine "prohibit[s] state laws that either 'regulate the United States directly or discriminate against the Federal Government or those with whom it deals.'" United States v. Washington, 142 S. Ct. 1976, 1984 (2022) (brackets, citation, and emphases omitted). The Act regulates the federal government by providing that "[n]o entity or person" -- a term that the district court interpreted to include federal officers -- may enforce the specified federal laws. Mo. Rev. Stat. § 1.450. And the Act discriminates against the federal government by imposing civil penalties when deputized state officials enforce those laws "under the color of * * * federal law," id. § 1.460.1, and by prohibiting the employment of certain former federal employees, see id. § 1.470.1.

2. Missouri makes no serious effort to argue that a State may direct state officials to treat federal law as invalid, require state officials to protect citizens from the enforcement of federal law, or punish federal officers who enforce federal law. It instead tries to argue that the Act does not actually do any of those things. Missouri's arguments, however, defy the Act's plain text.

Missouri first argues (Appl. 2) that most of the Act's provisions are "purely declaratory." That is incorrect. The Act's first section is indeed purely declaratory; there, the state legislature "finds and declares," among other things, that it has the power to "judge for itself" the validity of federal statutes. Mo. Rev. Stat. § 1.410.2(5). The Act's remaining provisions, however, prescribe substantive rules, see id. §§ 1.420-1.450, and create substantive remedies for violations of those rules, see id. §§ 1.460-1.470. "The court should regard the statute as meaning what it says." Emery v. Wal-Mart Stores, Inc., 976 S.W.2d 439, 449 (Mo. 1998) (en banc) (per curiam).

Contrary to Missouri's repeated assertions (Appl. 8, 12, 16, 22), the Missouri Supreme Court did not hold in City of St. Louis v. State, 643 S.W.3d 295 (2022) (en banc), that most of the Act's provisions lack operative effect. In that case, the court considered whether municipalities could bring a declaratory action challenging the Act. Id. at 296-297. In a section of the opinion titled "Factual and Procedural Background," the court stated: "[The Act's] first four sections contain legislative findings and declarations." Id. at 297 (emphasis omitted). That statement, however, was not directed to resolving any contested legal issue and thus does not form part of the court's holding. See, e.g., State v. Russell, 598 S.W.3d 133, 139 (Mo. 2020) (en banc) ("[T]he authority of the decision as a precedent is limited to those points of law which are raised by the record, considered by the court,

and necessary to a decision.") (citation omitted). In any event, the court described the rest of the Act as containing "substantive provisions to enforce these legislative declarations." St. Louis, 643 S.W. at 297 (emphasis added). The court's ultimate holding also reflects the understanding that the Act is not purely hortatory: The court ruled that the statute inflicted substantive injuries for which municipalities could sue. See id. at 302-303.

Missouri next argues (Appl. 3) that the Act regulates only "Missouri agencies and political subdivisions, not the Federal Government." But the Act provides 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" the specified federal laws. Mo. Rev. Stat. § 1.450 (emphasis added). As the district court explained, "no entity or person" includes federal officers -- who are, after all, the most obvious class of persons who would enforce federal law. Appl. App. 27a. Missouri observes that the Act applies to any "entity or person, including any public officer or employee of this state." Appl. 33 (first emphasis added). But "'[i]ncluding' is a word of enlargement," "not a word of limitation"; "'it implies that there may be [other examples] which are not mentioned.'" Scanwell Freight Express STL, Inc. v. Chan, 162 S.W.3d 477, 482 (Mo. 2005) (en banc) (citation omitted).

Missouri argues (Appl. 13, 30-31, 33) that the Missouri Supreme Court held in St. Louis that the Act does not regulate the

federal government. Missouri relies (Appl. 30-31) on the court's statement that "Section 1.450 removes from Missouri entities * * * 'the authority to enforce or attempt to enforce'" specified federal firearms laws. St. Louis, 643 S.W.3d at 297. But that statement, too, appears in the "Factual and Procedural Background" section of the court's opinion, was not directed to resolving any contested legal issue, and thus does not form part of the court's holding. Ibid. (emphasis omitted). That statement also concerns only "Section 1.450." Ibid. It does not address Section 1.460, which imposes civil penalties upon state agencies employing federally deputized state officials for actions taken "under the color of * * * federal law," Mo. Rev. Stat. § 1.460.1, or Section 1.470, which disqualifies certain former federal employees from state employment, see id. § 1.470.1.

Finally, Missouri characterizes the Act (Appl. 3, 11, 16-17) as an exercise of its prerogative under the anticommandeering doctrine to withhold law-enforcement assistance from the federal government. See Printz v. United States, 521 U.S. 898, 933 (1997). The government has not argued, and the district court did not hold, that Missouri is required to assist in the enforcement of federal law. See Appl. App. 26a ("Missouri cannot be compelled to assist in the enforcement of federal regulations."). The State is free to withhold that assistance -- including based on the State's view that certain federal laws are unconstitutional. But the Act goes far beyond merely withholding state law-enforcement assistance.

It directs state officials to treat certain federal laws as invalid, see Mo. Rev. Stat. § 1.430; requires state officials to protect against the enforcement of those federal laws, see id. § 1.440; purports to forbid federal officials from enforcing those laws, see id. § 1.450; prohibits state officials from enforcing those laws even when deputized to act under color of federal law, see id. § 1.460.1; and denies state employment to federal employees who enforce those laws, see id. § 1.470.1.

The Act, moreover, applies not only to state law-enforcement officers, but also to "the courts * * * of this state." Mo. Rev. Stat. § 1.440. "The anticommandeering doctrine applies 'distinctively' to a state court's adjudicative responsibilities." Haaland v. Brackeen, 599 U.S. 255, 288 (2023) (citation omitted). Despite the anticommandeering doctrine, the "Judges in every State" are "bound" by federal law, "any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. Const. Art. VI, Cl. 2. In violation of that command, the Act directs the "courts * * * of this State" to "protect" Missourians from certain federal laws. Mo. Rev. Stat. § 1.440.

Even focusing on withdrawal of law-enforcement assistance, the anticommandeering doctrine does not excuse the Act. For example, Missouri is entitled to refrain from allowing state officials to be deputized by federal agencies. Having voluntarily allowed those deputizations, however, it may not "affix penalties

to acts done under the immediate direction of the national government," Tennessee v. Davis, 100 U.S. 257, 263 (1880), by punishing agencies employing those deputized officials for acts done "under the color of * * * federal law," Mo. Rev. Stat. § 1.460.1. Similarly, Missouri's law-enforcement officers are entitled to refrain from participating in federal fugitive operations. But they are not entitled to agree to participate, only to withdraw at the scene upon the discovery of a firearm, jeopardizing the safety of other participants in the operation. See p. 10, supra.

More generally, "[t]he Constitution * * * is concerned with means as well as ends." Cedar Point Nursery v. Hassid, 141 S. Ct. 2063, 2074 (2021) (citation omitted). Even when the government pursues an end that it could lawfully achieve, the means that it uses to achieve that end must be "consistent with the letter and spirit of the constitution." Horne v. Department of Agriculture, 576 U.S. 350, 362 (2015) (brackets and citation omitted). Missouri may not accomplish the lawful end of withdrawing assistance from the federal government through the unlawful means of purporting to invalidate federal statutes and creating a regime of legal rights and duties premised on that purported invalidity. Contrary to Missouri's assertion (Appl. 1-2), that argument does not improperly focus "on the legislature's reason for passing" the Act. Rather, it focuses on what the Act says and does. See Mo. Rev. Stat. § 1.430 ("All federal acts * * * [identified in Section 1.420] shall be invalid to this state, shall not be recognized by

this state, shall be specifically rejected by this state, and shall not be enforced by this state.").

3. Invoking (Appl. 35-36) the Act's severability clause, see Mo. Rev. Stat. § 1.485, Missouri also challenges the district court's ruling that the Act is invalid in its entirety. See Appl. App. 24a-25a, 28a. But that is a question of severability governed by state law. See Wyoming v. Oklahoma, 502 U.S. 437 (1992) ("[T]he determination of severability [of a state statute] * * * [is] one of state law."). And under Missouri law, severability clauses have "little import." Labor's Educational and Political Club-Independent v. Danforth, 561 S.W.2d 339, 350 (Mo. 1977) (en banc). Even though the state legislature has adopted a blanket severability clause "provid[ing] that all statutes are severable," ibid. (citing Mo. Rev. Stat. § 1.140), the Missouri Supreme Court applies "a two-part test to determine whether valid parts of a statute can be upheld despite the statute's unconstitutional parts," Priorities USA v. Missouri, 591 S.W.3d 448, 456 (Mo. 2020) (en banc).

Under that test, a statute is severable only if (1) "after separating the invalid portions, the remaining portions are in all respects complete and susceptible of constitutional enforcement" and (2) "the remaining statute is one that the legislature would have enacted if it had known that the rescinded portion was invalid." Priorities USA, 591 S.W.3d at 456 (citation omitted). The district court determined that the Act failed the first step: After separating the unlawful portions of the Act, such as the

portions purporting to invalidate certain federal laws, the Act's remaining provisions would be "rendered meaningless" and "would have no practical or legal effect" because those other provisions refer to or depend upon the cornerstone provision purporting to declare various federal laws invalid. Appl. App. 25a. The court also determined that the Act failed the second step: The court had "no basis to conclude [that] the Missouri General Assembly would have enacted" the Act without the unconstitutional provisions. Id. at 28a.

The same result follows under the Act's severability clause. The clause preserves only "the provisions or applications of [the Act] that may be given effect without the invalid provision or application." Mo. Rev. Stat. § 1.485. But no such provisions or applications exist. Everything in the Act is textually, logically, and practically predicated on the Act's unconstitutional attempt to nullify specified federal laws. See, e.g., Mo. Rev. Stat. § 1.420 (defining specified federal laws as "infringements"); id. § 1.430 (providing that those federal laws "shall be invalid to this state"); id. § 1.440 (directing state courts and officers to protect against "the infringements defined under section 1.420"); id. § 1.450 (prohibiting the enforcement of the laws "described under section 1.420"); id. § 1.470.1 (prohibiting the employment of federal officers who have enforced "the infringements identified in section 1.420").

II. MISSOURI HAS FAILED TO ESTABLISH A LIKELIHOOD THAT THIS COURT WOULD GRANT REVIEW

The standard for granting "extraordinary relief" entails "not only an assessment of the underlying merits but also a discretionary judgment about whether the Court should grant review in the case." Does 1-3 v. Mills, 142 S. Ct. 17, 18 (2021) (Barrett, J., concurring in the denial of application for injunctive relief). "Were the standard otherwise, applicants could use the emergency docket to force the Court to give a merits preview in cases that it would be unlikely to take." Ibid. That factor, too, weighs against granting Missouri's stay application: Missouri has not shown that a decision of the Eighth Circuit affirming the district court's injunction would warrant this Court's review.

Missouri argues (Appl. 24-26) that the district court's decision on standing conflicts with the Fifth Circuit's decision in United States v. Texas, No. 21-50949, 2021 WL 4786458 (Oct. 14, 2021), a case where the United States sued to challenge a Texas law that contradicted this Court's then-binding precedent recognizing a constitutional right to abortion and attempted to avoid judicial review by providing enforcement only through private suits. But the Fifth Circuit in that case simply issued an unpublished order staying a preliminary injunction pending appeal; it did not issue an opinion explaining its order, much less reach a definitive holding about the United States' standing. See id.

at *1. A perceived conflict with that order would not warrant this Court's review.

Texas in any event differs markedly from this case. In Texas, the United States challenged a state law that regulated private physicians; here, the United States challenges a state law that regulates the federal government itself. The challenged law in Texas, as understood by the Fifth Circuit, did not authorize any enforcement at all by Texas officials, see Whole Woman's Health v. Jackson, 13 F.4th 434, 442, aff'd in part and rev'd in part, 595 U.S. 30 (2021); the challenged law here, as understood by the district court, contemplates implementation and enforcement by Missouri officials, see Appl. App. 11a. And in Texas, the State had argued that the United States lacked a cause of action to sue it, see State Resp. Br. at 42-57, United States v. Texas, 595 U.S. 74 (2021) (No. 21-588); here, by contrast, Missouri's stay application does not dispute that the United States has a cause of action in equity to seek an injunction against unconstitutional or preempted state actions that directly interfere with federal operations.[2]

[2] Missouri errs in asserting that the injunction here, like the injunction in Texas, operates on state "courts and clerks" by preventing them from accepting filings. Appl. 17; see Appl. 24-25. The United States did not seek such relief and the district court did not suggest that its injunction would have that effect. Unlike the Texas injunction, the injunction here does not mention state courts or court clerks. And an injunction that simply prohibits a State and its officers and employees from implementing and enforcing a challenged law is not naturally understood to prevent state courts from accepting filings.

Missouri also argues (Appl. 26-27) that the district court's decision conflicts with United States v. California, 921 F.3d 865 (2019), cert. denied, 141 S. Ct. 124 (2020), a case in which the Ninth Circuit upheld a California statute that "limit[ed] the cooperation between state and local law enforcement and federal immigration authorities." Id. at 872. But as explained above, the Missouri statute goes well beyond limiting cooperation between state and federal authorities. See pp. 23-26, supra. Unlike the statute in California, the Missouri statute in this case purports to invalidate federal laws, see Mo. Rev. Stat. § 1.430; directs state officials to protect against the enforcement of those laws, see id. § 1.440; and punishes federal officials who enforce those laws, see id. § 1.470.1.

In fact, other courts of appeals that have confronted state statutes that resemble the Act -- including the Ninth Circuit -- have had no difficulty recognizing that such statutes are unconstitutional. In Montana Shooting Sports Ass'n v. Holder, 727 F.3d 975 (2013), the Ninth Circuit held unconstitutional the "Montana Firearms Freedom Act," which purported to declare that certain firearms are "'not subject to federal law or federal regulation, including registration.'" Id. at 978 (citation omitted); see id. at 982-983. And in United States v. Cox, 906 F.3d 1170 (2018), cert. denied, 139 S. Ct. 2690 and 139 S. Ct. 2691 (2019), the Tenth Circuit held unconstitutional Kansas's "Second Amendment Protection Act," which purported to declare certain federal firearms

laws "'null, void and unenforceable.'" Id. at 1189 (citation omitted); see id. at 1192.

Missouri, moreover, does not meaningfully deny that, if the Act means what the district court understood it to mean, the United States has standing and the Act violates the Constitution. Missouri instead argues that the district court misinterpreted the Act. Compare Appl. App. 27a (interpreting the Act to regulate the federal government), with Appl. 33 (arguing that the Act does not regulate the federal government); compare Appl. App. 11a (interpreting the Act to allow the Attorney General to bring enforcement suits), with Appl. 28-29 (arguing that the Act does not allow enforcement by the Attorney General); compare Appl. App. 27a (interpreting the Act to "impos[e] a duty * * * to obstruct the enforcement of federal firearms regulations in Missouri"), with Appl. 2 (arguing that the Act is "purely declaratory"); compare Appl. App. 24a-25a, 28a (applying state-law severability principles), with Appl. 35-36 (arguing that the court misapplied state severability principles).

Those asserted errors of state law would not warrant this Court's review. This Court ordinarily grants certiorari only to resolve "federal question[s]," not to resolve disputes about the proper interpretation of state law. Sup. Ct. R. 10(a) (emphasis added). And the Court "generally accord[s] great deference to the interpretation and application of state law" by the lower federal courts, which "are better schooled in and more able to interpret

the laws of their respective States." Expressions Hair Design v. Schneiderman, 581 U.S. 37, 45 (2017) (citations omitted). Under a principle known as the two-court rule, such deference is especially appropriate when -- as would presumably be the case here if the Eighth Circuit affirms the district court's injunction -- "a construction of state law [is] agreed upon by the two lower federal courts." Virginia v. American Booksellers Ass'n, 484 U.S. 383, 395 (1988).

Missouri suggests (Appl. 29-30) that, although it never asked the district court to certify those state-law issues to the state supreme court, the district court should have taken that step "sua sponte." But in our adversarial system, courts do not normally grant relief that the parties have not requested. See, e.g., United States v. Sineneng-Smith, 140 S. Ct. 1575, 1579 (2020). In any event, "[c]ertification is by no means 'obligatory' merely because state law is unsettled; the choice instead rests 'in the sound discretion of the federal court.'" McKesson v. Doe, 141 S. Ct. 48, 51 (2020) (citation omitted). The question whether the district court abused its discretion by failing to certify issues to the state supreme court sua sponte would not warrant this Court's review.

III. MISSOURI HAS FAILED TO ESTABLISH THAT IT FACES IRREPARABLE HARM OR THAT THE EQUITIES OTHERWISE FAVOR A STAY

1. Missouri has failed to show that it would suffer irreparable harm in the absence of a stay. As an initial matter,

Missouri's assertion of irreparable harm contradicts its arguments on standing and the merits. For example, Missouri does not reconcile its argument that a State suffers irreparable harm when a federal court enjoins the implementation of a state statute, see Appl. 36-37, with its argument that the United States does not suffer even an Article III harm when a State purports to invalidate and obstruct the enforcement of federal statutes, see Appl. 30-31. Nor does Missouri explain how the State could suffer irreparable harm from an injunction preventing state officials from enforcing the Act, see Appl. 36, if those officials play no role in implementing the Act in the first place, see Appl. 29. Nor, finally, does Missouri explain why it needs "emergency relief," Appl. 13, if the Act's central provisions are "purely declaratory," Appl. 3.

Missouri's assertion of irreparable harm in any event fails on its own terms. Missouri argues that, when "a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury." Appl. 36-37 (citation omitted). But that principle, while ordinarily sound, does not extend to flagrantly unconstitutional statutes that purport to nullify federal law. A State has no legitimate interest in enforcing statutes that so plainly defy the Constitution.

Missouri nowhere explains how the district court's order imposes any concrete harm on state operations, and it is not obvious

how it could. Missouri suggests (Appl. 38) that the order deprives the state legislature of the power to "set the bounds of Missouri law enforcement," but that suggestion is incorrect. The order rightly undoes Missouri's instruction to state officials to treat federal law as invalid. But the order does not affirmatively require Missouri to participate in federal law enforcement.

Missouri also argues (Appl. 37) that the district court's order frustrates the state legislature's effort to give private citizens a "remedy (against Missouri officials) * * * to enforce their Second Amendment rights." But the Act does not grant private citizens a remedy for violations of their constitutional rights. Rather, it allows private citizens (and public officials such as the Attorney General) to sue state agencies employing federally deputized state officials for actions taken "under the color of * * * federal law," Mo. Rev. Stat. § 1.460.1, and to sue state agencies that hire certain former federal employees, see id. § 1.470.1. Those remedies do not enforce the Second Amendment, but rather Missouri's nullificationist scheme.

2. To obtain a stay, an applicant must do more than show that it faces irreparable harm. It must also show that the balance of hardships weighs in its favor and that a stay would be in the public interest. See Nken v. Holder, 556 U.S. 418, 426 (2009). Missouri cannot make those showings.

Missouri argues (Appl. 36) that the district court has caused it irreparable harm by enjoining the implementation of a state

statute. By the same logic, however, Missouri has caused the United States irreparable harm by purporting to invalidate and frustrate the operation of federal statutes. And the Supremacy Clause determines how to balance those competing harms. The harm caused by the obstruction of federal law (which is the supreme law of the land) necessarily outweighs any harm caused by an injunction barring implementation of a state law (which is not).

In addition, the United States did not file this suit to vindicate some point of principle. Rather, it has sued because federal law-enforcement officials have determined the Act has had "an extremely negative effect on successful law enforcement and public safety within the State of Missouri." App., infra, 13a. For example, the Act has prompted state law-enforcement officers to disengage at the scene upon discovering firearms during joint federal-state operations -- creating "grave security issues within the context of the operation for other task force members." App., infra, 26a. And it has led state law-enforcement officers to stop participating in joint federal-state task forces, see id. at 5a; to stop sharing information with the federal government, see id. at 6a-7a; and even to knowingly release a federal fugitive, see id. at 25a-26a. There can be no serious dispute that the balance of the equities and public interest justified the district court's issuance of an injunction -- and that they weigh against a stay.

Missouri seeks (Appl. 18) to minimize the United States' harms by emphasizing that the United States "waited to sue until eight

months after the [Act] was enacted." But municipalities in Missouri immediately challenged the Act in state court. See St. Louis, 643 S.W.3d at 298. The United States participated in that litigation as an amicus curiae and detailed the significant harm that the Act had caused. See U.S. Amicus Br. at 29-32, St. Louis, supra (No. SC99290). Particularly given that pending state suit, it was entirely reasonable for the United States to wait to bring its own federal suit until experience had confirmed the damaging practical effects of Missouri's novel nullification scheme and until it had become clear that immediate relief was not otherwise forthcoming in state court.

* * * * *

When South Carolina attempted to nullify federal tariff laws in the 1830s, President Jackson responded that the "power to annul a law of the United States, assumed by one State," is "incompatible with the existence of the Union, contradicted expressly by the letter of the Constitution, unauthorized by its spirit, inconsistent with every principle on which it was founded, and destructive of the great object for which it was formed." Proclamation No. 26, Respecting the Nullifying Laws of South Carolina, 11 Stat. 773 (1832) (emphasis omitted). Such a power is an "indefensible" and "impracticable" "absurdity" that "would have been repudiated with indignation had it been proposed" at the Convention in Philadelphia. Id. at 772-773. "If this doctrine had been established at an earlier day, the Union would have been dissolved in its

infancy." Id. at 772. President Jackson's admonitions remain sound today. Missouri is not entitled to extraordinary equitable relief that would enable it to resume implementing a scheme of nullification and interposition.

CONCLUSION

The application for a stay of the district court's injunction pending appeal and certiorari should be denied.

Respectfully submitted.

ELIZABETH B. PRELOGAR
Solicitor General

OCTOBER 2023

APPENDIX

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

THE UNITED STATES OF AMERICA	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No. 2:22-cv-4022-BCW
	)	
	)	
THE STATE OF MISSOURI, *et al.*	)	
	)	
Defendants.	)	
	)	

DECLARATION OF FREDERIC D. WINSTON

I, Frederic D. Winston, declare under penalty of perjury and pursuant to 28 U.S.C. § 1746 as follows:

1. I am the Special Agent in Charge of the Kansas City Field Division of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). I have served in my current capacity since January 3, 2021. As Special Agent in Charge, I am responsible for overseeing the criminal and regulatory enforcement operations of the Kansas City Field Division and for ensuring that such operations are consistent with federal law and the policies of ATF and the Department of Justice.

2. I have been a law enforcement officer since July 15, 1991 and employed by ATF since August 27, 2001. Before serving in my current capacity, I worked as a local police officer and street-level federal agent. I have served in several law enforcement capacities and worked in different judicial districts and states. Most of my law enforcement work stems from information sharing, whether it was done face-to-face or through review of databases and records systems. Like my law enforcement colleagues, my job in general relies upon communication and cooperation at all levels. Previously as a local officer, I served as a federally deputized task force

officer and learned the value of teamwork in law enforcement. As a Resident Agent in Charge of an ATF Field Office, I led a multi-agency gang investigation unit. The unit was comprised of federal and state law enforcement personnel who worked in collaboration to successfully serve and protect the citizens within our area of responsibility. Later, as an Assistant Special Agent in Charge, I created a multi-agency strike force in the St. Louis area built upon the premise of federal agents and local officers working as a team, sharing information and resources, and all working together in an effort to decrease violent gun crimes.

3. The purpose of this declaration is to explain ATF Kansas City Field Division's role in protecting Missouri citizens from violent crime and to identify ways in which Missouri House Bill 85, also called the Second Amendment Preservation Act, impedes ATF's ability to carry out that role. This declaration is based on my personal knowledge as well as knowledge made available to me in the course of my duties as the Special Agent in Charge.

ATF's Mission, Organization, and Administration of Federal Firearms Laws

4. ATF's mission is to fight violent crime and to protect the public by interdicting and preventing illegal firearms trafficking and the criminal possession and use of firearms, and by ensuring compliance with federal laws and regulations by firearms industry members. ATF has twenty-five field divisions throughout the country. The Kansas City Field Division is located in Kansas City, Missouri and encompasses all of Missouri, with additional offices in St. Louis, Cape Girardeau, Springfield, and Jefferson City, Missouri. This Division also covers the States of Nebraska, Kansas, Illinois, and Iowa. Along with our high volume of criminal enforcement responsibilities, this Division is also tasked with regulating the over 4,100 federal firearms licensees with a business premises in Missouri.

5. ATF is responsible for administering and enforcing laws related to firearms and ammunition, specifically the Gun Control Act of 1968 (GCA), 18 U.S.C. §§ 921 et seq. and the National Firearms Act of 1934 (NFA), 26 U.S.C. §§ 5801 et seq. See 28 U.S.C. § 599A; 28 C.F.R. § 0.130. Some of the key purposes of these laws are to effectively regulate firearms that travel in or affect interstate commerce to reduce the likelihood that they are used by those involved in criminal activities.

6. ATF is the only federal agency authorized to license and inspect firearms dealers to ensure they comply with laws governing the sale, transfer, possession, and transport of firearms. See 28 U.S.C. § 599A; 28 C.F.R. § 0.131.

Violent Crime Within Missouri

7. Violent crime is a significant problem in Missouri. In 2020, the Missouri State Highway Patrol (MSHP), which is responsible for reporting state-wide crime statistics, reported 33,267 violent crime offenses state-wide, an increase of 8.38% from the previous year.[1] That same year, MSHP reported 731 homicide offenses state-wide, an increase of 26.47% from 577 such offenses reported in 2019.

8. Firearms are used in a significant number of violent crimes in Missouri. MSHP reports a total of 13,964 firearm-related offenses in 2020, an increase of 109.20% from 2019. MSHP also reports that, of the 731 homicides in the state in 2020, 506 involved a firearm. Further, of Kansas City's 176 homicides in 2020, 148 (84.1%) were committed by firearms. The St. Louis Metropolitan area, for its part, experienced 264 homicides in 2020, 92.1% of which were committed by firearms.

[1] The MSHP data referenced in this declaration are available at https://showmecrime.mo.gov/CrimeReporting/CrimeReportingTOPS.html (last visited 2/28/22).

9. Gun violence in the State has continued through 2021, with MSHP reporting 20,690 firearm-related crimes, an increase of 48.17% from 2020, and 571 homicides, 77.5% of which involved a firearm. Further, Kansas City suffered 137 homicides in 2021, while the St. Louis Metropolitan Area reported 189 homicides, the vast majority of which involved a firearm.

10. ATF's role in limiting unlawful access to firearms is thus key to preventing additional violent crimes in the State. Additionally, ATF's ability to solve and assist in the prosecution of violent crime frequently depends on data associated with firearms, *e.g.*, ballistics information, or records maintained by federal firearms licensees, as discussed further below.

11. Federal firearms investigations and prosecutions are key components of combating violent crime, and promoting public safety, within Missouri. The arrest and conviction of those violating the Federal firearms laws are frequently one of the most effective tools for taking violent criminals off the street.

Missouri Second Amendment Preservation Act

12. On June 12, 2021, the Governor of Missouri signed Missouri House Bill Number 85 (HB85), also called the "Second Amendment Preservation Act" or the "SAPA" into law. As enacted, the SAPA purports to create significant new limits on the ability and authority of state and local law enforcement to enforce federal firearms laws and imposes sanctions on those who violate these limits or enable their violation. Additionally, the SAPA declares certain federal firearms laws unlawful. Based upon the passage of this law, ATF has seen impacts that I believe hinder the collaborative partnerships and investigative information sharing that protect the people of Missouri, as well as other states. As discussed further below, the SAPA has negatively impacted law enforcement and public safety within Missouri by: (1) prompting the withdrawal of state and local officers from joint task forces; (2) limiting the amount of information that ATF receives from

state and local entities; and (3) purporting to nullify, and consequently creating confusion about the validity of, federal firearms laws.

Effects of the SAPA: Withdrawal from Task Forces and other Partnerships

13. The SAPA has already had a significant impact on ATF's partnerships with state and local law enforcement offices. Those partnerships, which include task forces designed to address crimes in the locations specific to a partner department, are critical to ATF's law enforcement mission of protecting Missouri communities from violent crimes.

14. Before the passage of the SAPA, there were approximately 69 ATF Special Agents, 22 ATF Industry Operations Investigators, 44 full-time Task Force Officers, and 9 Special Deputies, with a post of duty in Missouri.

15. As of this declaration, 13—and soon to be 14—of the 53 state and local officers with federal deputizations (the Task Force Officers and Special Deputies referenced in the preceding paragraph), have withdrawn from participation in ATF task forces in some capacity based on the SAPA, specifically:

a. The MSHP withdrew three troopers from participation in any ATF Task Forces;

b. The Columbia Police Department (PD) withdrew four officers from participation in an ATF Task Force;

c. The Johnson County Sheriff withdrew one deputy from participation in an ATF Task Force;

d. The O'Fallon PD withdrew two officers with K-9s from participation in an ATF Task Force;

e. The Sedalia PD withdrew two officers from participation in an ATF Task Force;

f. The Hazelwood PD has advised that it will withdraw from participation in an ATF Task Force; and

g. The Cape Girardeau PD has allowed its TFO to continue to participate in an ATF Task Force, but that TFO has been instructed to limit his activities and not participate in certain federal firearms matters.

16. These task forces are primarily dedicated to investigating and enforcing the laws relevant to the illegal use, possession, and trafficking of firearms. Such task forces, as well as ATF's overall partnerships with state and local departments and agencies, are key to holding violent persons and those illegally using firearms accountable under the law. For example, from its creation in January 2020 through August 2021, the Columbia Violent Crimes Task Force has recovered 55 firearms from prohibited persons; made 30 arrests for violation of federal law and 35 arrests for violation of state law. Without exception, these arrests stem from collaborative investigations involving violent crime offenses, firearm possession, or association with violent gang organizations. However, since the passage of the SAPA, state and local law enforcement no longer work with the Violent Crimes Task Force at all. Indeed, state and local law enforcement partners have limited their cross-jurisdictional cooperation with ATF all across the state.

17. There are numerous instances in which Federal partnership via the National Integrated Ballistic Information Network (NIBIN) has assisted in resolving violent crime investigations, such as in Columbia and the greater Boone County area. An example of the combined effectiveness of a strong local and Federal partnership is the arrest of those responsible for the tragic murder of Shamya Brimmage in March of 2017 in Columbia, Missouri. Brimmage

was celebrating her birthday inside a house when a drive-by shooting occurred, resulting in her death and another injured victim. A confidential source provided a local TFO with suspect information. Working in combination with an ATF agent partner, the team was able to detain the suspect in a vehicle matching other information relayed. Spent casings were recovered from that vehicle and NIBIN confirmed they were a match to those recovered from the homicide scene. Second Degree Murder charges remain pending against one defendant while another suspect pled guilty to Voluntary Manslaughter, among other charges, and is currently serving a 20-year sentence.

18. Because of the withdrawal of state and local officials from ATF task forces, ATF is no longer able to fulfill its duties as effectively, including preventing, investigating, and assisting in the prosecution of violent offenders. These state and local officials are critical members of ATF's law enforcement efforts. As a result of the withdrawals identified above, the SAPA has harmed law enforcement and public safety in Missouri.

19. For example, with respect to federal prosecutions initiated in Missouri federal court from ATF investigations, from June 12 through December 15 of 2019, 318 prosecutions were initiated (of which the vast majority involved firearms crime), defendants numbered 364, and the number of criminal charges was 679. Of that same time-period in 2020, 285 prosecutions were initiated (of which the vast majority involved firearms crime), defendants numbered 380, and the number of charges was 788. Of that same time-period in 2021, 177 prosecutions were initiated (of which the vast majority involved firearms crime), defendants numbered 230, and the number of charges was 365. The 2021 numbers represent a forty-four percent (44%), thirty-seven percent (37%), and forty-six (46%) percent drop, respectively from the 2019 numbers. While it is likely

that other factors such as COVID-19 also played a role in the decline of prosecutions, the SAPA was undoubtedly a factor.

20. Moreover, ATF has had planned enforcement operations, such as search warrants, where we normally would have collaborated with our local partners, but these departments now feel they cannot participate due to the SAPA. This has caused ATF to pull resources from other areas of responsibility to ensure agent and public safety.

Effects of the SAPA: Limits on Information from State and Local Officials

21. The SAPA has also impacted ATF's ability to rely on state and local partners for information related to ATF's own investigations, including those related to the criminal use, possession, and trafficking of firearms.

22. For example, citing the SAPA, the Director of the MSHP Missouri Information Analysis Center (MIAC) informed ATF that the Center will no longer provide any investigative support to ATF, to include assisting in providing background information on investigative targets. The MIAC also indicated it will no longer submit firearms trace requests directly to ATF, a process used to help identify firearms used in crimes and link persons to unlawful activities. Additionally, MIAC will not assist in Federal Bureau of Investigation National Instant Criminal Background Check System (NICS) referral investigations that are assigned to ATF, *e.g.*, after a purchaser receives a firearm from a licensee but is then determined to be prohibited from possessing the firearm. Prior to the implementation of the SAPA, the MIAC has been a great partner and resource for ATF investigations associated with firearms investigations and violent criminals.

23. In the United States District for the Western District of Missouri, local and state collaboration varies, with many departments still hesitant of fully cooperating with ATF because of the uncertain ramifications of the SAPA. Agents are required to get subpoenas for information

that pre-SAPA was readily available. In parts of the Western District, local law enforcement will only provide assistance in emergency situations. In the Eastern District of Missouri, most departments are similarly hesitant to assist ATF based on the SAPA.

24. Perhaps most concerning, several state and local law enforcement entities have indicated that they will no longer input data into NIBIN. NIBIN is the only interstate automated ballistic imaging network in operation in the United States and seeks to automate ballistics evaluations and provide actionable investigative leads in a timely manner. This technology is vital to any violent crime reduction strategy because it enables investigators to match ballistics evidence with other cases across the nation. This process also helps reveal previously hidden connections between violent crimes in different states and jurisdictions.

25. Some jurisdictions previously stopped inputting data into NIBIN but have now resumed doing so. However, most of those jurisdictions will only input data after complying with additional procedures, which delays the entry of information into NIBIN and likewise harms its efficacy.

26. NIBIN is a critical tool in efforts to combat violent crime nationwide and in Missouri. NIBIN, however, is only as good as the information put into the system. If state and local law enforcement do not timely input data into NIBIN, our collective efforts in fighting violent crime are diminished. A key component of the NIBIN process is information sharing and the timeliness of inputting data which generates potential leads. Potential leads increase the likelihood of linking, solving or preventing additional firearm violence. The stoppage or hesitancy to use NIBIN caused by the SAPA, has placed an avoidable risk upon the public.

27. The following statistics demonstrate the utility and importance of NIBIN within Missouri. Over the three years preceding the SAPA's enactment, NIBIN was used to generate

over 6,000 leads, including 3,149 cross-jurisdictional leads. From October 2019 to June 2021, approximately 200 suspects were identified in NIBIN-related incidents in the State.

28. In the absence of state and local law enforcement officials voluntarily providing the information and assistance described above, particularly with respect to NIBIN, ATF's law enforcement responsibilities are harder to execute. Thus, the SAPA has deprived ATF of cooperative information-sharing relationships which harm law enforcement and public safety in Missouri.

Effects of the SAPA: Nullifying Federal Law and Creating Confusion

29. The SAPA purports to nullify certain federal firearms laws that are important for maintaining public safety. For example, since there is no corresponding Missouri state violation, the SAPA would appear to allow certain federally prohibited persons to possess firearms, such as those under a restraining order and those convicted of misdemeanor crimes of domestic violence, 18 U.S.C. §§ 922(g)(8), (g)(9).

30. For reference, from October 2017 through July 2021, ATF referred approximately eight cases for prosecution to the respective Missouri Offices of the U.S. Attorney for violations of 18 U.S.C. § 922(g)(8), as well as approximately 20 cases for prosecution to those Offices for violations of 18 U.S.C. § 922(g)(9). During that same timeframe, ATF received approximately 81 FBI referrals for violations of § 922(g)(8), and approximately 744 FBI referrals for violations of § 922(g)(9).

31. From August 2021 through the present, no further cases have been referred for prosecution and ATF received an additional 11 FBI referrals for violations of § 922(g)(8) and an additional 148 FBI referrals for violations of § 922(g)(9).

32. All of these referrals involved people located in Missouri and identified by the Federal Bureau of Investigation's NICS System as prohibited persons who attempted to purchase, or actually did purchase firearms. State and local partners, and more specifically task force officers, often assist in investigating these referrals. Without this assistance, ATF will not be able to investigate these referrals as quickly, which in turn allows prohibited persons who were able to purchase firearms to retain them longer at greater risk to the public.

33. Prosecuting those who possess firearms after being convicted of a disqualifying misdemeanor crime of domestic violence and/or are in violation of qualifying restraining orders, is an important part of ATF's public safety mission, especially as to those offenders who have threatened violence or committed violent acts against family members.

34. By way of further example, local officers have indicated to ATF that even State court protective orders, on which State judges issue the orders with the advisement that possession of firearms would violate Federal law, could not be enforced by local officers due to the SAPA and that ATF—instead of local officers—are now responsible for retrieving those firearms.

35. Along with those noted GCA violations, the SAPA also appears to prohibit the imposition of federal taxes and registration requirements on any firearm covered by the NFA. The NFA defines "firearm" to include shotguns with a barrel length of less than 18 inches or weapons made from shotguns with an overall length of less than 26 inches; rifles with a barrel length of less than 16 inches or weapons made from rifles with an overall length of less than 26 inches; machineguns; silencers; and destructive devices. 26 U.S.C. § 5845. The NFA also requires the registration of such firearms in the National Firearms Registration and Transfer Record maintained by ATF. See 26 U.S.C. § 5841. Like with GCA violations, ATF conducts substantial enforcement efforts on these NFA-type weapons, and often work with our local partners in these investigations.

Enforcing these requirements of federal law are important aspects of ATF's mission to ensure lawful, safe ownership of firearms.

36. Federal firearms licensees also play a significant role in helping to protect the public, and their compliance with the federal laws and regulations is critical to this important goal. I specifically note the requirements of licensees to accurately and timely maintain acquisition and disposition records and to ensure that the ATF Form 4473 and multiple handgun sales forms are correctly completed and maintained when applicable. These records are key components to assisting in trace requests for recovered crime guns. Licensees also carry an important responsibility of ensuring a person acquiring any firearms is correctly identified and a background check is done to prevent prohibited persons from receiving firearms. The SAPA purports to declare these responsibilities of federal firearms licensees invalid.

37. Since the enactment of the SAPA, federal firearms licensees have indicated confusion about the current status of the law. In an attempt to affirm that these legal responsibilities continue regardless of the SAPA, and to address questions and confusion the Kansas City Field Division has received related to the SAPA, on July 26, 2021, ATF issued an informational letter addressed to all federal firearms licensees in Missouri. See www.atf.gov/firearms/docs/open-letter/missouri-open-letter-all-ffls-house-bill-number-85-second-amendment/download.

38. Federal firearms licensees' compliance with federal laws and regulations are critical in the fight against gun violence. For example, when ATF recovers a firearm, tracing the ownership of that firearm is crucial to the resulting investigation and frequently depends upon the records kept by federal firearms licensees. Without those records, a successful trace becomes much more difficult to achieve.

39. The SAPA's attempt to nullify federal law could also create confusion amongst private citizens about whether federal firearms laws remain valid and enforceable. If a private citizen were to erroneously believe that federal firearms laws were invalid, and sought to oppose ATF's lawful authority on that basis, that would pose an unacceptable and unnecessary risk of violent confrontation, use of force, and serious injury.

Conclusion

40. In sum, based upon my knowledge and law enforcement experience in working with state and local partners, the SAPA has caused and will continue to cause a strain on law enforcement relationships due to the inability to communicate as effectively and to efficiently share information and investigative resources. This, in turn, will prevent law enforcement at all levels from effectively serving and protecting the citizens of Missouri and other states.

41. As discussed above, the SAPA (1) prevents federal, state, and local law-enforcement partners from cooperating effectively to investigate and enforce the law; (2) constrains information-sharing with the Federal Government, which deprives law enforcement of information needed to successfully investigate crimes, including violent crimes; and (3) creates confusion about the current status of federal firearms laws, which could harm the Federal Government's ability to effectively enforce federal law and potentially even lead to unnecessary, dangerous situations. For all of these reasons, the SAPA has an extremely negative effect on successful law enforcement and public safety within the State of Missouri.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed:

Frederic D. Winston
Special Agent in Charge
ATF Kansas City Field Division
U.S. Department of Justice

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-4022-BCW
	)	
	)	
THE STATE OF MISSOURI; *et al.*,	)	
	)	
Defendants.	)	
	)	

EFFECTS OF H.B. 85 ON UNITED STATES MARSHALS LAW ENFORCEMENT EFFORTS IN MISSOSURI

I, Jonathan D. Jordan, being duly sworn upon my oath, do state and testify that:

1. I am employed by the United States Marshals Service (USMS) as the Presidentially Appointed United States Marshal for the Eastern District of Missouri and as so, have knowledge of the USMS operations in the Eastern District of Missouri. The statements in this declaration are based on my personal knowledge as well as information provided to me in the course of my official duties.

2. I have 42 years of law enforcement experience. Prior to becoming United States Marshal, I was the duly elected Sheriff of Cape Girardeau County Sheriff for twenty-five years. I am a past President of the Missouri Sheriff's Association and a graduate of the National Sheriff's Institute of Longmont Colorado. I have served as an undercover narcotic officer, chief of detectives, and supervisor of the Cape Girardeau County Major Case Squad. I also served on many state, local, and national law enforcement organizations.

Background on USMS Operations

3. The USMS was the first federal enforcement agency in the United States. Federal Marshals have served the country since 1789, often in unseen but critical ways. The USMS occupies a uniquely central position in the federal justice system. It is the enforcement arm of the federal courts, involved in various federal law enforcement initiatives. Presidentially appointed U.S. Marshals, one for each federal judicial district, direct the activities of 94 districts. Approximately 3,738 Deputy U.S. Marshals and criminal investigators form the backbone of the agency. The duties of the USMS include protecting the federal judiciary, apprehending federal fugitives, managing, and selling seized assets acquired by criminals through illegal activities, housing and transporting federal prisoners, and operating the witness security program.

4. The USMS is the federal government's primary agency for fugitive investigations. The Marshals have the broadest arrest authority among federal law enforcement agencies. The Marshals aid state and local agencies in locating and apprehending their most violent fugitives. The USMS arrest, on average, 310 fugitives every day. The USMS task forces combine the efforts of federal, state, and local law enforcement agencies to locate and arrest the most dangerous fugitives. Task force officers are state and local police officers who receive special deputations with the USMS. While on a task force, these officers can exercise federal USMS authority, such as crossing jurisdictional lines. The USMS "15 Most Wanted" fugitive program draws attention to some of the country's most dangerous and high-profile fugitives. These fugitives tend to be career criminals with histories of violence, and they post a significant threat to public safety.

5. The USMS is the lead agency for 56 interagency fugitive task forces located throughout the United States, as well as seven congressionally funded regional fugitive task forces.

In 2020, the USMS led fugitive task forces resulting in the arrests of over 77,460 federal, state, and local fugitives, and cleared over 90,446 warrants.

6. In the State of Missouri, the USMS operates in two districts, the Eastern District (E/MO) and the Western District (W/MO). I am responsible for the USMS activities in the Eastern District of MO which generally covers the eastern half of Missouri and includes approximately 49 counties.

7. The E/MO Fugitive Task Force (EMOFTF) is divided into two different enforcement teams. The teams are: The Heartland Fugitive Task Force (HFTF), which consists of our southern office located in Cape Girardeau, Missouri and the Metro Fugitive Task force (MFTF) located in St. Louis, Missouri. The Metro Fugitive Task Force also has deputies detached to enforcement teams at the local DEA office, and Organized Crime and Drug Task Force (OCDEFT) Strike Force located in Maryland Heights, Missouri. Both these task forces are comprised of a combination of USMS Deputies, and officers from state, local, and other federal agencies. The task forces seek to apprehend individuals, some of whom may be wanted for federal firearm violations.

Impacts of Missouri H.B. 85

8. I understand that Missouri has enacted H.B. 85, which purports to nullify several categories of federal firearm laws and imposes penalties on state and local law enforcement agencies who enforce, or assist in the enforcement of, those federal laws. The USMS' duties include enforcing federal firearm laws with respect to fugitives. As discussed further below, H.B. 85 has had several negative impacts on USMS operations in E/MO.

9. EMOFTF is comprised of approximately 48 deputized federal, state, and local officers. We have 13 full-time TFOs on the MFTF. We also have 3 full-time TFOs in Cape (14

in STL and 3 in Cape). These TFOs have all been restricted at one time or another in various degrees from enforcing federal firearms laws. One agency, the Missouri State Highway Patrol, is not allowed to enforce the federal violations.

10. In FY2021, E/MO received 421 federal weapons related warrants from the U.S. Attorney's Office. These warrants related to felon in possession of firearm, or similar, charges that originated from arrests, executed by state and local officers, of subjects for state firearms violations. These charges were then referred to the U.S. Attorney's Office for federal indictments. E/MO also had 320 weapons related warrants stemming from supervised release violations and/or bond violations with an underlying charge of felon in possession. E/MO seized an additional 233 firearms during arrests of state and federal fugitives. Many of these were prosecuted federally. With the passage of HB-85, local task force officers are hesitant to participate in task force operations and seize firearms knowing that the subjects qualify for federal prosecution.

11. Since January 2020, EMOFTF recovered 393 firearms from prohibited persons and made 1,201 arrests for state and federal weapons offenses. In addition to the weapons arrests, E/MO task force arrested 470 additional persons for homicide, assault, and robbery, which all involved firearms.

12. Since the passage of HB-85, we have not lost any EMOFTF TFOs due to H.B. 85, but most of the EMOFTF TFOs have been restricted at one time or another, and in various degrees, from enforcing federal firearms violations. This hesitancy initially impacted fugitive operations in such areas as failure to share information that can be helpful in locating the fugitive; failing to act when a firearm is discovered at the scene; refusing to share information to determine if a firearm is stolen; and walking away from an operation when other task force members were actively involved in executing an arrest warrant. Of all the agencies that EMOFTF works with,

the Missouri State Highway Patrol still has not allowed their officers, who are part of the task force, to enforce federal firearms violations. However, some other task force officers have been allowed to resume normal operations by their agencies.

13. A specific incident where H.B. 85 caused problems for E/MO occurred when our Task Force was attempting to apprehend a federal fugitive in Cape Girardeau, Missouri. Our officers were on scene to arrest a federally wanted fugitive on a dangerous drugs warrant. They called for assistance with establishing an outer perimeter from Cape Girardeau Police Department, which has long been standard practice. The outer perimeter contains the fugitive inside of a dwelling or specific area and is important for protecting the safety of law enforcement officers and the surrounding community. The officers from Cape PD apologized and informed the USMS deputies that the Department had been ordered to leave and that it could not help any federal agency at this time. Except for an extreme emergency, that remains the policy of the Cape Girardeau Police Department.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Jonathan D. Jordan
United States Marshal
Eastern District of Missouri

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-4022-BCW
	)	
THE STATE OF MISSOURI; *et al.*,	)	
	)	
Defendants.	)	
_____	)	

EFFECTS OF H.B. 85 ON UNITED STATES MARSHALS LAW ENFORCEMENT EFFORTS IN MISSOSURI

I, Micheal Vernon Stokes, being duly sworn upon my oath, do state and testify that:

1. I am an adult resident of Clay County, Missouri and I have firsthand knowledge of the matters set forth herein, including based on information provided to me in the course of my official duties. I have been employed by the United States Marshals Service (USMS), Western District of Missouri since October 2002 and have served continually in this district since that time. I currently serve as the Marshals Service Enforcement Supervisor for the federal district.

2. I was previously employed by the Kearney Nebraska Police Department as a Police Officer from November 1998 to October 2002. I directly supervise fugitive task force operations and the enforcement of all orders of the federal court as they pertain to arrest warrants for federal law violations where the USMS takes primary responsibility or by delegation from another law enforcement agency. The fugitive task force also assists state and local agencies in locating and arresting subjects wanted on state arrest warrants. I oversee all USMS enforcement program activities for the district. I have a Master's Degree in Public Affairs and a Master's Certificate in Emergency Management from Park University.

Background on USMS Operations

3. The USMS was the first federal enforcement agency in the United States. Federal Marshals have served the country since 1789, often in unseen but critical ways. The USMS occupies a uniquely central position in the federal justice system. It is the enforcement arm of the federal courts, involved in various federal law enforcement initiatives. Presidentially appointed U.S. Marshals, one for each federal judicial district, direct the activities of 94 districts. Approximately 3,738 Deputy U.S. Marshals and criminal investigators form the backbone of the agency. The duties of the USMS include protecting the federal judiciary, apprehending federal fugitives, managing and selling seized assets acquired by criminals through illegal activities, housing and transporting federal prisoners, and operating the witness security program.

4. The USMS is the federal government's primary agency for fugitive investigations. The Marshals have the broadest arrest authority among federal law enforcement agencies. The Marshals aid state and local agencies in locating and apprehending their most violent fugitives. The USMS arrest, on average, 310 fugitives every day. The USMS task forces combine the efforts of federal, state, and local law enforcement agencies to locate and arrest the most dangerous fugitives. Task force officers are state and local police officers who receive special deputations with the USMS. While on a task force, these officers can exercise federal USMS authority, such as crossing jurisdictional lines. The USMS "15 Most Wanted" fugitive program draws attention to some of the country's most dangerous and high-profile fugitives. These fugitives tend to be career criminals with histories of violence, and they pose a significant threat to public safety.

5. The USMS is the lead agency for 56 interagency fugitive task forces located throughout the United States, as well as seven congressionally funded regional fugitive task forces.

In 2020, the USMS led fugitive task forces resulting in the arrests of over 77,460 federal, state, and local fugitives, and cleared over 90,446 warrants.

6. In the State of Missouri, the USMS operates in two districts, the Eastern District (E/MO) and the Western District (W/MO). I am responsible for USMS enforcement activities in W/MO, which comprises the western half of Missouri and encompasses 66 of the 114 counties in the state to include the state capital in Jefferson City, and the major metro areas of Columbia, Springfield and Kansas City. E/MO comprises the eastern 48 counties and the largest metro area of St. Louis.

7. The W/MO operates one fugitive task force. The U.S. Marshals Midwest Violent Fugitive Task Force (MVFT), headquartered in Kansas City, Missouri, operates in conjunction with members of the Kansas City, Independence, and St. Joseph Police Departments; Jackson, Cass, Clay, Buchanan, Nodaway, and Clinton County Sheriff's Departments; Missouri State Highway Patrol; and other federal law enforcement partners. The Springfield Division partners with members of the Green County Sheriff's Office, the Christian County Sheriff's Office, the Springfield Police Department, and the Joplin Police Department. Officers from these state and local law enforcement agencies participating in the MVFT are federally deputized pursuant to USMS federal authorities. The MVFT is comprised of approximately 29 USMS deputies, and approximately 44 federally deputized task force officers from state and local law enforcement agencies within Western Missouri. On average, 5 task force officers work with the MVFT on a full-time basis and approximately 20 others are very active on a part-time basis.

8. The task force objectives are to seek out and arrest both state and federal fugitives charged with violent crimes, serious drug offenses, weapons violations, homicide, sex offenders, and other serious felonies. Many of these individuals are wanted for federal firearm violations or

federal supervised release violations for the same. The task force also provides direct support to law enforcement agencies in tracking down and recovering missing children.

9. USMS operations produce significant results in fighting violent crime. For example, since the summer of 2018, the USMS W/MO, Kansas City Office has conducted multiple enforcement operations resulting in the arrest of 2,568 fugitives.

10. The USMS takes the lead in serving all federal warrants sought by state and local law enforcement agencies that file cases directly with the U.S. Attorney's Office. Other federal agencies delegate federal warrants sought by their agency to the USMS for apprehension purposes. From 2017 to 2021, 1003 subjects were charged by the U.S. Attorney's Office in federal court with firearms related offenses and were processed through the USMS. The USMS W/MO apprehended 180 of these individuals through its task force work. While the W/MO apprehended 63 individuals in 2020 for federal firearms related charges, in 2021 the W/MO only apprehended 30 individuals for federal firearms related charges due to a significant drop in the number of federal firearms violation cases charged by the U.S. Attorney's Office. This is due to H.B. 85.

11. The USMS, by virtue of conducting its fugitive apprehension mission, also seizes large numbers of firearms from prohibited persons each year. In late 2018, as part of Project Safe Neighborhoods and the Public Safety Partnership initiative in Kansas City, as directed by the Department of Justice, the USMS W/MO stepped up efforts to seek out subjects with felony warrants who were actively committing crimes in the community and placing innocent citizens at risk of becoming victims of violent crime. This resulted in a dramatic increase of firearms seized at the time of the fugitive arrests. From 2017 to 2021, a total of 328 firearms were seized. Although the total number of firearms seized increased every year between 2017 to 2020, 95 firearms were seized in 2020, and only 51 firearms were seized in 2021. Although there are many

factors involved, including a reduction in TFOs and COVID, H.B. 85 is the only change that caused the significant drop in the numbers.

Impacts of Missouri H.B. 85

12. I understand that Missouri has enacted H.B. 85, which purports to nullify several categories of federal firearm laws and imposes penalties on state and local law enforcement agencies who enforce, or assist in the enforcement of, those federal laws. As discussed further below, H.B. 85 has had several negative impacts on USMS operations in W/MO.

13. The predominant number of federal firearms violation warrants generated in the W/MO come from the Kansas City Division and are related to investigations conducted in the Kansas City metro area. Prior to the passage of H.B. 85, the Kansas City Missouri Police Department and other local agencies routinely worked directly with the U.S. Attorney's Office to indict subjects for federal firearms offenses. If the officer presenting the case was not a task force officer for another federal agency, fugitive apprehension efforts are led by the USMS. Since the passage of H.B. 85, and more specifically, the penalty phase implementation on August 28, 2021, the filing of federal firearms offenses by local law enforcement agencies has slowed dramatically. From 2018 to 2021, the USMS W/MO received a total of 128 firearm related fugitive apprehension referrals from local law enforcement. While there were 46 referrals in 2020, there were only 15 in 2021, and only five such referrals since August 2021 due directly to the reduction in cases filed directly with the USAO by state and local agencies due to H.B. 85.

14. Six members of the Kansas City Missouri Police Department, Fugitive Apprehension and Arraignment Section, are specially deputized by the USMS and work on a daily basis with the USMS W/MO fugitive task force to apprehend violent offenders wanted throughout the metro area. Since the passage of H.B. 85, they too have experienced a significant "cooling

effect" in regard to their participation with the USMS task force if the subject sought is wanted for a federal weapons violation warrant. This approach is the same whether the case is one that is brought to the U.S. Attorney's Office by the Kansas Police Department or another agency. When the federal firearms offense is the primary charge for the warrant, and the USMS task force is working to apprehend the fugitive, these federally deputized officers are not allowed to assist the USMS.

15. The Kansas City Police Department lab, prior to the passage of H.B. 85, processed seized firearms to assist law enforcement agencies in identifying links between seized firearms and other crimes. After the passage of the law, the lab would not process firearms for DNA if in support of a federal agency conducting a federal firearms investigation. For example, the USMS had a felon in possession of a firearm case affected by this policy that we are unable to get a firearm in possession of the ATF processed for DNA. The subject is in custody on a federal probation violation and felon in possession of a firearm.

16. On September 5, 2021, a Missouri State Highway Patrol Trooper stopped a vehicle for speeding in Buchanan County and determined that the driver was wanted on a USMS warrant for a federal weapons violation, which was issued out of the District of Arizona. The vehicle was registered in Arizona and the driver did not have ties to Missouri, but instead was just passing through. The Trooper did not arrest the subject and instead released him at the scene believing that his department prevented him from making an arrest on the federal arrest warrant for the firearms violation. The USMS W/MO was not contacted on the date of this stop and did not receive a request for assistance. The USMS only learned of the vehicle stop after the fact, and by happenstance. The USMS then had to divert resources toward apprehending the individual and conducting a local investigation to determine if the subject was still in the local area or was

"passing through." The subject was apprehended by local law enforcement in Arizona approximately one month later. Although the Highway Patrol later clarified that the arrest of a subject who has an outstanding federal firearms warrant was not prohibited if randomly encountered during their duties, Missouri State Highway Patrol investigators that work routinely with the USMS W/MO on fugitive matters are still reluctant to participate in the actual investigation of a fugitive wanted on federal firearms warrant if it is not secondary to other primary charges such as narcotics, assault, etc.

17. Since the passage of H.B. 85, the W/MO has experienced varying levels of participation in task force operations by local law enforcement. First, some TFOs have stepped away from all fugitive operations related to the execution of an arrest warrant for a federal firearms offense at the outset. Second, as it relates to state or federal convicted felons, TFOs have initially participated in fugitive operations; however, when a firearm is discovered, some TFOs have reduced their level of participation, including immediately disengaging from the operation. Third, for non-firearm related fugitive operations, TFOs may initially participate in the fugitive operation, but depending on the developments at the scene, including the discovery of a firearm, TFOs have disengaged while execution of the arrest warrant is in process. This creates grave security issues within the context of the operation for other task force members.

18. As members of the USMS W/MO management team routinely visit with heads of the local law enforcement agencies in the district, a prevailing theme over the past year, since the passage of H.B. 85, has been one of a "wait and see" approach to joining the USMS task force due to the uncertainty of civil liability they could potentially face if involved in the enforcement of federal firearms violation warrants. This has negatively impacted recruitment efforts for the task force, to the detriment of the task force's overall effectiveness.

19. In conclusion, I believe that H.B. 85 constitutes a threat to public safety in Missouri, because it interferes with USMS' responsibility to apprehend fugitives, including violent offenders, and because it limits the information and resources available to USMS in performing those duties.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Michael V. Stokes

Mike Stokes
Deputy United States Marshal
Western District of Missouri

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

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

DECLARATION OF FEDERAL SECURITY DIRECTOR ANGELA BROOKS

I, Angela Brooks, declare under penalty of perjury and pursuant to 28 U.S.C. § 1746 as follows:

1. I am the Federal Security Director ("FSD") for the Transportation Security Administration's ("TSA") operations at federalized airports in the state of Missouri. The TSA is a component agency of the United States Department of Homeland Security ("DHS"). As the FSD, my responsibilities include overseeing all TSA screening operations at Missouri airports, and ensuring that such operations are consistent with federal law and the policies of TSA and DHS.

2. I have extensive experience in law enforcement and in the federal aviation sector, having started my career with the Federal Aviation Administration ("FAA") as a Civil Aviation Security Specialist with the FAA's Civil Aviation Security Field Office in Kansas City,

Missouri. While at the FAA, I was trained as a Federal Air Marshal and flew several missions to high threat international destinations.

3. In 2002, after the terrorist attacks on 9/11, I joined the TSA as the Assistant FSD for Regulatory Inspections at the Kansas City International Airport (MCI). I was selected to be the Assistant FSD for Operations in 2003, and then selected to be the Deputy FSD for the State of Missouri in September of 2013. In May of 2018, I was selected to serve as the FSD for the State of Wyoming, and returned to my home state in my current position as the FSD for Missouri in September of 2020.

4. The purpose of this declaration is to explain the TSA's role in securing the national aviation system and to identify ways in which Missouri House Bill 85 ("H.B. 85"), also known as the Second Amendment Preservation Act, may impede TSA's ability to carry out its role. This declaration is based on my personal knowledge, as well as knowledge made available to me in the course of my duties as the FSD for the State of Missouri.

TSA's Mission and Congressional Mandate

5. Following the events of 9/11, it was clear that the security screening at airports was not sufficient to protect the traveling public, and Congress therefore created the TSA to better secure all modes of transportation, including aviation. It is TSA's mission to prevent terrorist attacks and reduce the vulnerability of the United States to terrorism within the nation's transportation networks. In furtherance of this mission at airports across the country, including those in Missouri, TSA screens all individuals and accessible property entering the sterile area of the airport—i.e., the physical portion of an airport that provides passengers access to boarding aircraft—in order to deter, detect, and prevent the carriage of prohibited items such as any explosive, incendiary, firearm, or weapon into that sterile area or onboard an aircraft.

6. In accordance with the Aviation and Transportation Security Act ("ATSA"), TSA is charged with screening airport passengers at TSA checkpoints across the nation to ensure that airline passengers do not bring unauthorized explosives, firearms, and incendiary devices or other prohibited items, either on their person or in accessible property, into the security screening checkpoint and/or the sterile area of the airport. *See* 49 U.S.C. §§ 44901, 44903; 49 C.F.R. § 1540.111. It is a federal crime to knowingly and willfully enter an airport area where TSA conducts or regulates screening activities in violation of TSA security requirements, *see* 49 U.S.C. § 46314, which generally prohibit the carrying of weapons during TSA inspection (even before a person is otherwise permitted to enter the sterile area of an airport). *See* 49 C.F.R. § 1540.111(a)(1); *see also, e.g.*, 49 U.S.C. § 46505 (prohibiting carrying a weapon when on, or attempting to get on, an aircraft); 49 C.F.R. § 1503.401 (allowing TSA to impose civil penalties on individuals who bring prohibited items to the checkpoint or onboard aircraft).

7. TSA checkpoints serve as the screening location where the agency ensures that passengers are not carrying prohibited items into the sterile area of an airport. Congress contemplated that, in general, airports would rely on "the services of qualified State, local, and private law enforcement personnel" to "provide[] a law enforcement presence and capability . . . that is adequate to ensure the safety of passengers." 49 U.S.C. § 44903(c)(1). Thus, when a passenger's prohibited firearm is discovered at a TSA checkpoint, TSA generally refers the passenger to state or local law enforcement to pursue any potential criminal violations and ensure that the firearm is not allowed into the sterile area of the airport.

8. TSA also has a comprehensive civil enforcement program to impose civil penalties on passengers who bring prohibited items, including firearms, whether loaded or unloaded, to the TSA checkpoint. 49 C.F.R. § 1503.401 (TSA may impose civil penalties

against individuals who bring prohibited items to the checkpoint or onboard aircraft). Transportation Security Inspectors (TSIs) coordinate with local law enforcement to collect the initial evidence necessary to pursue the investigation of a regulatory violation and potential civil penalty.

Firearms at TSA Checkpoints Nationwide and in Missouri

9. TSA screeners frequently and consistently discover firearms in carry-on luggage at checkpoints around the nation. This problem is recurrent and increasing. In the first nine months of 2021, TSA firearm catches at checkpoints set a 20-year record. See TSA firearm catches at checkpoints sets 20-year record in first nine months of 2021 | Transportation Security Administration, *available at* https://www.tsa.gov/news/press/releases/2021/10/13/tsa-firearm-catches-checkpoints-sets-20-year-record-first-nine.

10. The discovery of firearms at the checkpoint is particularly problematic in Missouri. From 2018 through 2021, TSA discovered a total of 526 firearms at screening checkpoints in Missouri, with 183 firearm discoveries in 2021. The incidence rate for Missouri is substantially higher than the nationwide average – in 2021, the nationwide average was one firearm discovery for every 97,999 passengers, but in Missouri, it was one firearm discovery for every 51,184 passengers. *See* Rate of TSA firearm discoveries at Missouri airports trends upward in 2021 | Transportation Security Administration, *available at* https://www.tsa.gov/news/press/releases/2022/01/19/tsa-firearm-discoveries-missouri-airports-trends-upward-2021.

The Impact of H.B. 85 on TSA Operations

11. On June 12, 2021, the Governor of Missouri signed H.B. 85 into law. H.B. 85 purports to nullify federal firearms laws that Missouri considers an infringement on the Second

Amendment rights of Missourians. In doing so, H.B. 85 purports to limit the ability and authority of state and local law enforcement to enforce federal firearms laws. H.B. 85 ensures this limitation by allowing civil lawsuits against state and local law enforcement agencies that would impose hefty fines – up to $50,000 – on those entities that are found to violate H.B. 85.

12. Because H.B. 85 appears to nullify all federal acts "forbidding the possession . . . of a firearm . . . by law-abiding citizens," H.B. 85 appears to nullify all federal laws that prohibit firearm possession by *all* citizens in certain places, such as airports. However, even if H.B. 85 were construed to incorporate Missouri state law's place-based restrictions on firearm possession, H.B. 85 would still purport to nullify important federal restrictions on firearms in airports.

13. More specifically, it is my understanding that Missouri state law does not affirmatively prohibit concealed carry permit-holders from carrying firearms into airports or prohibit members of the public from carrying unloaded firearms into airports when ammunition is not readily accessible.

14. In contrast to Missouri state law, federal law explicitly prohibits individuals from possessing firearms (including unloaded firearms) at airports at the beginning of TSA inspection. *See* 49 C.F.R. § 1540.111(a)(1). Thus, TSA's statutory and regulatory provisions that prevent firearms from being carried into the sterile area of an airport or onto an aircraft go beyond Missouri's place-based possession restrictions.

15. As indicated above, Congress contemplated that TSA's screening operations and efforts will work in concert with local law enforcement personnel. When passengers bring firearms in their carry-on luggage, the very presence of that firearm necessarily creates a potentially dangerous and attention-grabbing situation at the checkpoint. In order to ensure that

a firearm discovered during screening is secured and prevented from entering the sterile area, TSA relies on local law enforcement officers to respond to the checkpoint. TSA standard operating protocols require TSA screeners to call local law enforcement if they believe that a carry-on bag contains a firearm. For every airport in Missouri at which TSA conducts screening, the responding airport police are provided by state and/or local jurisdictions.

16. Given the federal prohibition on carrying a firearm into the sterile area of an airport or onto an aircraft, and the broad nullifying provisions of H.B. 85, the law poses a risk to the federal aviation system because it may discourage state and local law enforcement personnel at airports from assisting promptly in responding to TSA when firearms are discovered at the checkpoint.

17. Additionally, it cannot be guaranteed that state and local law enforcement personnel at airports will continue to provide TSA with information necessary for TSA to carry out its civil enforcement actions against persons who bring firearms to the screening checkpoint.

18. Thus, H.B. 85 increases the dangers associated with firearms at airports by creating confusion over whether state and local law enforcement personnel will continue to fulfill their passenger safety functions when a firearm is discovered. Any delay or hesitation in fulfilling this critical duty represents a substantial public safety threat, given the importance of acting swiftly to neutralize potential dangers in sensitive environments such as airports.

19. Finally, given the ever-increasing discovery of firearms at TSA checkpoints nationwide and in Missouri, TSA may need to be more proactive in deterring and dissuading the public from bringing firearms to the checkpoint, such as by asking law enforcement to retain a firearm discovered during screening pending federal enforcement efforts, whether civil or criminal. H.B. 85 would hinder these efforts in Missouri by creating confusion over whether

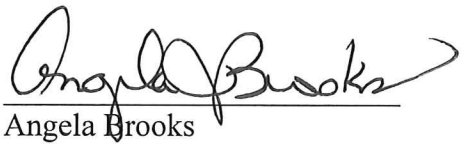
local law enforcement entities in Missouri would cooperate with any such enhanced federal mandates.

Conclusion

20. In sum, based upon my knowledge, and aviation and law enforcement experience in working with state and local airport law enforcement officers, H.B.85 diminishes the certainty that Missouri law enforcement officers will continue to work cooperatively and effectively with TSA in fulfilling its mission. This potential weakness could be exploited by persons seeking to do significant harm to the United States through its aviation system.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed:



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