No. 24-796

IN THE
Supreme Court of the United States

STATE OF MISSOURI, *ET AL.*, *Petitioners*,
v.
UNITED STATES OF AMERICA, *Respondent*.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

Brief *Amicus Curiae* of Gun Owners of America, Inc., Gun Owners Foundation, Gun Owners of California, Heller Foundation, Tennessee Firearms Association, Tennessee Firearms Foundation, Virginia Citizens Defense League, Virginia Citizens Defense Foundation, Grass Roots North Carolina, Rights Watch International, America's Future, DownsizeDC.org, Downsize DC Foundation, U.S. Constitutional Rights Legal Defense Fund, and Conservative Legal Defense and Education Fund in Support of Petitioners

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MISCELLANEOUS

INTEREST OF THE *AMICI CURIAE*[1]

Gun Owners of America, Inc., Gun Owners Foundation, Gun Owners of California, Heller Foundation, Tennessee Firearms Association, Tennessee Firearms Foundation, Virginia Citizens Defense League, Virginia Citizens Defense Foundation, Grass Roots North Carolina, Rights Watch International, America's Future, DownsizeDC.org, Downsize DC Foundation, U.S. Constitutional Rights Legal Defense Fund, and Conservative Legal Defense and Education Fund are nonprofit organizations, exempt from federal income tax under either sections 501(c)(3) or 501(c)(4) of the Internal Revenue Code. These entities, *inter alia*, participate in the public policy process, including conducting research, and informing and educating the public on the proper construction of state and federal constitutions, as well as statutes related to the rights of citizens, and questions related to human and civil rights secured by law.

Most of these *amici* filed an amicus brief when this case was in the Eighth Circuit. Brief Amicus Curiae of Gun Owners of America, *et al.* (May 18, 2023).

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[1] It is hereby certified that counsel of record for all parties received timely notice of the intention to file this brief; that no counsel for a party authored this brief in whole or in part; and that no person other than these *amici curiae*, their members, or their counsel made a monetary contribution to its preparation or submission.

STATEMENT OF THE CASE

On June 12, 2021, Missouri Governor Michael Parson signed into law the "Second Amendment Preservation Act" ("SAPA"), Mo. Rev. Stat. §§ 1.410 - 1.485. *See United States v. Missouri*, 660 F. Supp. 3d 791 800 (W.D. Mo. 2023). SAPA declares certain federal restrictions on firearms to be "infringements" of rights of Missourians protected by the Second Amendment to the United States Constitution, including:

> I. (1) Any tax, levy, fee, or stamp imposed on firearms, firearm accessories, or ammunition not common to all other goods and services and that might reasonably be expected to *create a chilling effect* on the purchase or ownership of those items by law-abiding citizens;
> (2) Any *registration or tracking* of firearms, firearm accessories, or ammunition;
> (3) Any *registration or tracking* of the ownership of firearms, firearm accessories, or ammunition;
> (4) Any act *forbidding the possession, ownership, use, or transfer* of a firearm, firearm accessory, or ammunition by law-abiding citizens; and
> (5) Any act ordering the *confiscation* of firearms, firearm accessories, or ammunition from law-abiding citizens. [Mo. Rev. Stat. § 1.420 (emphasis added).]

SAPA orders that "[a]ll federal acts, laws, executive orders, administrative orders, rules, and

regulations [which] infringe on the people's right to keep and bear arms as guaranteed by the Second Amendment ... *shall not be enforced by this state*." *Id.* at 1.430 (emphasis added). Additionally, SAPA provides that: "*No entity or person*, including any public officer or employee *of this state* or any political subdivision of this state, *shall have the authority to enforce* or attempt to enforce any federal acts, laws, executive orders, administrative orders, rules, regulations, statutes, or ordinances infringing on the right to keep and bear arms." *Id.* at 1.450 (emphasis added). Finally, SAPA imposes a $50,000 civil fine on any "political subdivision or law enforcement agency" that afterward hires any federal employee who attempted to enforce an "infringement." *Id.* at 1.470.

On February 16, 2022, the United States filed suit against the State of Missouri in the U.S. District Court for the Western District of Missouri for violation of the Constitution's Supremacy Clause and on other grounds. *Missouri* at *2. Missouri filed a motion to dismiss, arguing that SAPA does not violate the Supremacy Clause because "no provision of SAPA imposes any liability on the federal government, or restricts the action of federal government officers in any way." Missouri Motion to Dismiss, *United States v. Missouri*, Case No. 2:22-cv-04022-BCW, Doc. 16, at 3 (Mar. 14, 2022). Missouri argued that "[t]he federal government lacks authority to 'commandeer' Missouri's state officials and resources into the enforcement of federal regulatory programs — especially federal anti-gun programs," citing *Printz v. United States*, 521 U.S. 898, 935 (1997). *Id.* at 1.

The district court declared SAPA "invalid, null, void, and of no effect" for having exceeded the state's authority under the Supremacy Clause. *Missouri* at *3; *see also id.* at *25, *30. The Eighth Circuit affirmed. *United States v. Missouri*, 114 F.4th 980 (8th Cir. 2024).

SUMMARY OF ARGUMENT

For a short opinion, the Eighth Circuit's errors were manifold. Purporting to begin with the text of the Supremacy Clause, the Eighth Circuit omitted its most salient portions, viewing all federal laws and regulations to be valid and therefore "supreme." But the Supremacy Clause elevates only those federal laws "which shall be made in Pursuance" of the Constitution, and federal judges are *not* the only officials bound by oath to the Constitution. Indeed, this Court has previously recognized the role of legislatures in assessing the constitutionality of enactments, and the Supremacy Clause's text binds only *state judges*. Thus, not only did the courts below impermissibly second-guess Missouri's legislature and executive, but also they flouted this Court's precedents and misapplied the Supremacy Clause.

Rather than actually "invalidate" federal law as the Eighth Circuit claimed, Missouri's statute simply declares that state officials will not aid in federal enforcement efforts. While that choice is entirely permissible in our federalist structure, Missouri's statute actually *complements* federal law. Indeed, the category of firearms restrictions constituting "infringements" Missouri declines to enforce all have

solid grounding in prior decisions of this Court. Just as it did with the Supremacy Clause's text, the Eighth Circuit failed to engage with this Court's cases relevant to the laws Missouri viewed as infringing on firearms rights.

A closer examination of the opinions below reveals that the district and circuit courts' only true objection to Missouri's SAPA was not that Missouri lacked the authority to decline to aid federal enforcement of certain firearms laws, but rather that the courts did not like Missouri asserting that position so strongly. Thus, the district court flouted — and in fact reversed — the canon of constitutional avoidance, to seek out and declare a Supremacy Clause conflict where there was none. And on appeal, the Eighth Circuit affirmed with precious little explanation, relegating its entire merits analysis to a few short paragraphs of circular reasoning and novel legal theory. Any one of these errors would warrant this Court's review. Taken together, they make Missouri's Petition all the more compelling.

ARGUMENT

I. THE SUPREMACY CLAUSE DOES NOT PROTECT UNLAWFUL OR UNCONSTITUTIONAL FEDERAL ACTIONS.

In nullifying Missouri's exercise of its authority as a state to refuse to participate in unconstitutional federal actions, the courts below treated all federal firearm restrictions as not only "'presumptively lawful'" but in fact conclusively "*valid*." App.33a;

App.10a. Thus, in the Eighth Circuit's view, all federal firearm regulations are *ipso facto* constitutional, and no state may believe otherwise — or divert its law enforcement resources accordingly.

Ironically, this view elevates legislative enactments and administrative regulations to a position of supremacy over the Constitution itself. Indeed, this novel reasoning ignores the Supremacy Clause's plain text and turns its "rule of decision" on its head. *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 324 (2015). It also misreads both state and federal law and misapplies this Court's precedents. It is not Missouri's statute, but rather the Eighth Circuit's decision adopting "reasoning [that] is a virus that may spread if not promptly eliminated." *Coal. for T.J. v. Fairfax Cnty. Sch. Bd.*, 218 L. Ed. 2d 71, 75 (2024) (Alito, J., and Thomas, J., dissenting from denial of certiorari). This Court should grant the Petition and correct the federalism imbalance the panel has created.

A. The Eighth Circuit Ignored Key Provisions of the Supremacy Clause's Text.

Although purporting to nullify the Missouri statute under the Supremacy Clause, the Eighth Circuit gave little attention to the text of that Clause, entirely ignoring its provisions most relevant here. Indeed, in quoting the Supremacy Clause, the panel omitted key language explaining that only those federal laws "*which shall be made in Pursuance*" of the Constitution "shall be the supreme Law of the Land...." U.S. Const.

Art. VI, cl. 2 (emphasis added); *cf.* App.9a. It follows that not all federal laws are "supreme," as those laws passed in violation of the Constitution's guarantees are nothing more than a nullity. *See Marbury v. Madison*, 5 U.S. 137, 177 (1803) ("[A]n act of the legislature, repugnant to the constitution, is void.").

Neither the Eighth Circuit nor the district court acknowledged this textual limitation on the Supremacy Clause's reach. Relying instead on a passage from *McCulloch v. Maryland*, 17 U.S. 316 (1819), both courts simply observed that "'the states are prohibited from passing any acts which shall be repugnant to a law of the United States.'" App.9a; App.31a (both quoting *McCulloch* at 361). Thus, the courts below never entertained the possibility that a federal law could be passed which is "repugnant to the constitution" (*Marbury* at 177), even though not declared unconstitutional by a federal judge. Implicitly, the panel apparently believed that no other person or entity within federal or state government *other than federal courts* may have any opinion about the constitutionality of a law. But as this Court has observed, a legislature has "not just the right but the duty to make its own informed judgment on the meaning and force of the Constitution." *City of Boerne v. Flores*, 521 U.S. 507, 535 (1997). This Court also has recognized that individuals are under no obligation to yield to unconstitutional laws. *See Shuttlesworth v. Birmingham*, 394 U.S. 147, 151 (1969) ("a person faced with such an unconstitutional licensing law may ignore it and engage with impunity in the exercise of the right of free expression for which the law purports to require a license"). To that end,

rather than participate in enforcing a statute "repugnant to a law of the United States" (*McCulloch* at 361), Missouri simply made, for its own purposes, "its own informed judgment … of the Constitution." *Flores* at 535.

In contrast to Missouri's exercise of "its own informed judgment," neither the Eighth Circuit nor the district court considered whether the federal laws Missouri declined to enforce were actually "made in Pursuance" of Congress's powers, consistent with the limitations of the Second Amendment. Instead, the courts below simply assured themselves that Congress could do no wrong. For example, relying on *District of Columbia v. Heller*, 554 U.S. 570 (2008), the district court declared that *all of* the National Firearms Act and *all of* the Gun Control Act contain "'presumptively lawful regulatory measures.'" App.33a (quoting *Heller*, 554 U.S. at 626-27 & 627 n.26). And the Eighth Circuit went further, concluding without analysis or authority that all the regulations involved are "*valid* federal firearms laws." App.10a.

These holdings misrepresent this Court's precedents and warrant review. Nowhere did *Heller* hold all provisions of the National Firearms and Gun Control Acts to be constitutional. In fact, *Heller* declined to "undertake an exhaustive historical analysis … of the full scope of the Second Amendment," identifying only certain "longstanding prohibitions" which this Court assumed (but did not decide) would have "historical justifications … if and when" challenged. *Heller*, 554 U.S. at 626, 635.

Going further, in *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022), this Court clarified that, "when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct." *Id.* at 17. Thus, when the Government regulates arms-bearing conduct, such regulation is *presumed unconstitutional* unless and until the government "demonstrate[s] … consisten[cy] with this Nation's historical tradition of firearm regulation." *Bruen* at 17. And in fact, numerous courts have found portions of *both* Acts to be unconstitutional. *See, e.g., Range v. Att'y Gen. U.S.*, 124 F.4th 218 (3d Cir. 2024) (lifetime disarmament of nonviolent misdemeanant); *Reese v. BATFE*, 127 F.4th 583 (5th Cir. 2025) (handgun purchase ban for young adults); *United States v. Morgan*, 2024 U.S. Dist. LEXIS 152562 (D. Kan. Aug. 26, 2024) (machinegun possession ban); *United States v. Brown*, 2025 U.S. Dist. LEXIS 23823 (S.D. Miss. Jan. 29, 2025) (same). Both district and circuit opinions below were issued after *Bruen* was decided, but neither court grappled with *Bruen*'s rule that restrictions on the right to keep and bear arms have a presumption of *un*constitutionality, unless the state demonstrated relevant historical analogues.

What is more, the text of the Supremacy Clause provides that "*the Judges* in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. Const. Art. VI, cl. 2 (emphasis added). In binding state judges only, the Supremacy Clause cannot be said to bind the state legislature or the state governor responsible for enacting the Missouri statute. Yet the Eighth Circuit

failed to even quote this part of the Clause's limiting language. *See* App.1a-12a. But the Clause contemplates that, even though some state laws may be "Contrary" to the "supreme Law of the Land," these laws nevertheless shall remain within the province of the state judiciary to review. *See* A. Scalia & B. Garner, Reading Law: The Interpretation of Legal Texts at 56 (Thomson West: 2012) ("The words of a governing text are of paramount concern, and what they convey, in their context, is what the text means."); *see also id.* at 93 ("Nothing is to be added to what the text states or reasonably implies.... That is, a matter not covered is to be treated as not covered."). Neither court grappled with this critical language, despite purporting to apply the Clause's text.

B. The Missouri Statute Actually Complements Federal Statutes and Precedents.

Contrary to the Eighth Circuit's assertion that Missouri "attempt[ed] to invalidate federal law" altogether, App.10a, Missouri's statute in fact finds support in a number of provisions of existing federal law, whether statutory or precedential. Properly understood, the Missouri statute does not undermine federal law, but rather in many ways *reinforces* it.

For example, Mo. Rev. Stat. § 1.420(1) declares to be an infringement "[a]ny tax, levy, fee, or stamp imposed on firearms, firearm accessories, or ammunition not common to all other goods and services and that might reasonably be expected to create a chilling effect on the purchase or ownership of

those items by law-abiding citizens...." But this breaks no new ground. This Court already has repudiated taxes on the exercise of constitutional rights in other contexts, observing that "[a] power to tax differentially, as opposed to a power to tax generally, gives a government a powerful weapon...." *Minneapolis Star & Tribune Co. v. Minn. Comm'r of Revenue*, 460 U.S. 575, 585 (1983). Indeed, because "the power to tax involves the power to destroy," *McCulloch*, 17 U.S. at 431, "[t]here is substantial evidence that differential taxation" of constitutional rights "would have troubled the Framers...." *Minneapolis Star* at 583. Accordingly, this Court has declared unconstitutional targeted taxes on paper and ink, as well as poll taxes. *Id.* at 591; *Harper v. Va. State Bd. of Elections*, 383 U.S. 663, 666 (1966). In fact, this Court has stated broadly that governments "may not impose a charge for the enjoyment of a right granted by the Federal Constitution," and so "a person cannot be compelled 'to purchase, through a license fee or a license tax, the privilege freely granted by the constitution.'" *Murdock v. Pennsylvania*, 319 U.S. 105, 113, 114 (1943). The same principles apply to the Second Amendment, which "is not 'a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees.'" *Bruen* at 70.

Next, Mo. Rev. Stat. §§ 1.420(2) and (3) declare "[a]ny registration or tracking of firearms, firearm accessories, or ammunition," or their "ownership," to be an infringement. Once again, rather than contradicting federal law, the Missouri statute reinforces it. Indeed, federal law already prohibits "any system of registration of firearms, firearms

owners, or firearms transactions or dispositions" from "be[ing] established." 18 U.S.C. § 926(a). Likewise, Section 103(i) of the Brady Act, now codified at 34 U.S.C. § 40901, prohibits the government from using the National Instant Criminal Background Check System "to establish any system for the registration of firearms, firearm owners, or firearm transactions or dispositions, except with respect to persons, prohibited by section 922(g) or (n) of title 18 or State law, from receiving a firearm." The Missouri statute therefore provides its citizens with protection against state violation of a federal statutory protection which already exists. And as this Court already observed in other contexts, if a regulation unmasks citizens *because* of their insistence to exercise a right, it is constitutionally suspect. Indeed, the "compelled disclosure" of one's information to the government "may constitute a[n] effective … restraint on freedom of association...." *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 462 (1958); *see also United States v. Jones*, 565 U.S. 400, 416 (2012) (Sotomayor, J., concurring) ("Awareness that the government may be watching chills associational and expressive freedoms."). There is little doubt that gun owners also care about their privacy, especially in a world where governments, media, and even fellow citizens find the mere ownership of a firearm to be "controversial." *See McDonald v. City of Chicago*, 561 U.S. 742, 783 (2010) (plurality opinion).

Finally, Mo. Rev. Stat. §§ 1.420(4) and (5) declare "[a]ny act forbidding the possession, ownership, use, or transfer of a firearm, firearm accessory, or ammunition," or "ordering the confiscation" thereof, to

be an infringement. At the outset, this Court already has held that the simple possession of a firearm "is in no sense an economic activity," and so Congress lacks authority under the Commerce Clause to even regulate such passive conduct. *See United States v. Lopez*, 514 U.S. 549, 567 (1995). Likewise, this Court has repudiated "complete prohibition[s]" and "flat ban[s] on the possession" of classes of arms. *Heller*, 554 U.S. at 629; *Bruen*, 597 U.S. at 27. And in any case, these instruments and activities fall squarely within the Second Amendment's plain text. U.S. Const. Amend. II ("keep and bear Arms"); *see also Heller*, 554 U.S. at 581 (starting "with a strong presumption that the Second Amendment right is exercised individually and belongs to all Americans"); *United States v. Miller*, 307 U.S. 174, 180-82 (1939) (Founding-era militia statutes requiring the self-provision of accouterments and ammunition). Accordingly, this Court's precedents already presume prohibitions of such instruments and activities to be unconstitutional, and "[o]nly if" the government demonstrates a relevant historical tradition "may" a court conclude otherwise. *Bruen*, 597 U.S. at 17. To the extent that this Court's default assumption about restrictions on gun rights is unconstitutionality (until rebutted), then Missouri's legislature simply agreed.

II. THE DECISIONS BELOW REST ON BLATANT MISCHARACTERIZATIONS OF THE MISSOURI STATUTE, SEEKING OUT — RATHER THAN AVOIDING — CONSTITUTIONAL CONFLICT.

Although repeatedly acknowledging that Missouri is not required to enforce federal law, both the district and circuit courts glossed over that principle. Instead, they faulted Missouri for "purport[ing] to invalidate federal law...." App.3a; *see also* App.33a (district court claiming SAPA "purports to invalidate substantive provisions [of federal law] within Missouri"). But the Eighth Circuit offered nothing to support its assertion, while the district court could point to only a single provision of the Missouri statute that does not say what the court claimed. And rather than following the canon of constitutional avoidance,[2] both courts appeared eager to create friction, reading into the Missouri statute a conflict with federal law that does not appear in the text. This Court should grant the Petition to correct the lower courts' flagrant departures from settled principles of statutory interpretation.

A. The District Court Attempted to Manufacture a Supremacy Clause Conflict Where None Exists.

For its part, the district court appeared to misconstrue Missouri's prohibition on use of state

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[2] Scalia & Garner, *supra*, at 247 ("A statute should be interpreted in a way that avoids placing its constitutionality in doubt.").

resources to enforce federal law as *de facto* obstruction of federal law. But where the Supremacy Clause prohibits "direct conflict," the district court postulated only "logical implication." Where the Supremacy Clause prohibits "interference," the district court found only that Missouri law only tangentially "affect[s]" federal enforcement. And where the Supremacy Clause prohibits an "obstacle," the district court found only perceived "confusion." None of the district court's characterizations amounts to a Supremacy Clause violation.

In fact, there is no conflict at all between Missouri and federal law. For example, the district court noted that "federal law preempts a state law if the two are in direct conflict." App.34a ("[w]hen compliance with both federal and state regulations is a physical impossibility"). But the district court never identified any *actual* conflict between the SAPA and federal law. Indeed, nothing in SAPA demands that *federal* officers comply with the state statute. As the district court admits, the Missouri statute "declar[es] federal firearms regulations invalid" only "as to the state." App.41a. Conversely, the federal government may not demand that *state* authorities enforce federal law. App.21a (summarizing that Missouri "cannot be compelled to enforce a federal regulatory scheme" under *Printz v. United States*, 521 U.S. 898 (1997)).[3] App.41a. In other words, under Missouri's statutory

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[3] The district court cited *Printz* only once in passing, while summarizing Missouri's argument below. App.21a. Meanwhile, the Eighth Circuit cited *Printz* twice but, again, only in summarizing Missouri's position. App.5a; App.7a.

scheme, state authorities may comply with state law, while federal authorities comply with federal law, without any conflict at all. If, as the district court appeared to believe, simply ordering state authorities *not to assist* the federal government constitutes an "obstacle to the full purposes and objectives of federal firearms regulatory measures" (App.35a), then *Printz* was wrongly decided.

The district court was similarly misguided as to the United States' standing to challenge Missouri's law. Although noting that a state may not "*interfere* with the federal government's operations and objectives," or "*interfer[e]*" with "federal enforcement," the district court did not make such a finding. App.17a; App.18a (emphasis added). Rather, the court asserted only that the "United States' law enforcement operations have been *affected*" by operation of the Missouri law.[4] App.18a. But again, every state decision under *Printz* not to enforce federal law will in some way "affect" federal "enforcement operations." If "affect[ing]" enforcement of federal law is all that is needed, then once again *Printz* was wrongly decided.[5]

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[4] *Cf.* "Interfere," Merriam-Webster (last visited Feb. 25, 2025) ("hinders or impedes … be in opposition"), *with* "Affect," Merriam-Webster (last visited Feb. 25, 2025) ("to influence").

[5] In viewing "affecting" as sufficient for triggering the Supremacy Clause, the circuit court adopted the same questionable test triggering Commerce Clause power in *Wickard v. Filburn*, 317 U.S. 111 (1942), a case this Court described as "perhaps the most far reaching example of Commerce Clause authority over intrastate activity" which operated to "greatly expand[] the previously defined authority of Congress under that Clause...."

Similarly, the district court claimed that the Missouri statute "stands as an obstacle to the full purposes and objectives of federal firearms regulatory measures," on the novel theory that it creates "confusion" among Missouri's citizens and law enforcement. App.35a (SAPA "creates confusion regarding a Missouri citizen's obligation to comply with the taxation requirements of the NFA"); App.36a-37a (SAPA "create[s] confusion regarding registration of firearms," and "create[s] confusion about the lawful possession, ownership, use, transfer, or confiscation of firearms in Missouri"); App.40a (SAPA "causes confusion among state law enforcement officials who are deputized for federal task force operations")[6]; App.36a (claiming the "logical implication is that Missouri citizens need not comply"). But the SAPA never says (or implies) that gun owners need not comply with federal law. Nor is an "implication" of "confusion" the same thing as a law which "stands as an obstacle" to operation or

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Lopez, 514 U.S. at 560, 556. Indeed, Justice Thomas explained that *Wickard*'s "substantial effect on interstate commerce" test was "far removed from both the Constitution and from [this Court's] early case law." *Id*. at 601 (Thomas, J., concurring). The district court should not have applied *Wickard's* "affected" test to create a conflict under the Supremacy Clause .

[6] Elsewhere, the district court notes that, as a result of SAPA, "[s]tate and local law enforcement personnel are withdrawing from federal joint task forces and refusing to share investigative information." App.20a. It does not seem that SAPA is confusing at all.

enforcement of federal law.[7] Likewise, "withdraw[ing] personnel from joint task forces" is not the equivalent of "interfering with the Federal Government's ability to enforce lawfully enacted firearms regulations." App.43a. Unsurprisingly, the district court did not offer any authority for its claim that a judicial finding of "confusion" constitutes a Supremacy Clause violation. App.35a. Nor did the United States, when advancing that claim in its briefing.[8] And for good reason because, once again, if a state merely withdrawing its support from enforcement of federal law somehow is so "confusing" as to violate the Supremacy Clause, then *Printz* was wrongly decided.

Determined to find some basis to manufacture conflict between Missouri's SAPA and federal law, the district court pointed to a single provision in SAPA — Section 1.450 — the "plain language" of which the court claimed "regulates the United States directly." App.41a. But while the district court recited the portion of Section 1.450 stating that "[n]o entity … shall have the authority to enforce or attempt to enforce any federal acts," what is telling is the statutory language the court omitted and replaced

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[7] *Cf.* "Obstacle," Merriam-Webster (last visited Feb. 25, 2025) ("something that impedes progress or achievement"), *with* "Confuse," Merriam-Webster (last visited Feb. 25, 2025) ("to fail to differentiate").

[8] *See* United States' Memorandum in Support of Motion for Summary Judgment, *United States v. Missouri*, No. 2:22-cv-04022-BCW (W.D. Mo. Feb. 28, 2022), ECF No. 8; Brief for Appellee United States of America, *United States v. Missouri*, No. 23-1457 (8th Cir. Aug. 20, 2023), Entry ID No. 5304853.

with ellipses. In reality, Section 1.450's full language is: "[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 any federal acts...." App.58a (emphasis added) (also stating that "[n]othing … shall be construed to prohibit Missouri officials from accepting aid … in an effort to enforce *Missouri laws*") (emphasis added). Thus, read in full, Section 1.450 is state-focused and does not speak to the actions of federal officials. To be sure, the term "including" is presumed to be nonexclusive, and the statute may reach other "entit[ies]." *See* Scalia & Garner, *supra*, at 132. But whatever else is "includ[ed]" in Section 1.450's list must share common features with its illustrative examples — *i.e.*, must be "entit[ies] … *of this state*." Indeed, as this Court has explained, use of "including" represents "an illustrative application of the general principle." *Fed. Land Bank v. Bismark Lumber Co.*, 314 U.S. 95, 100 (1941). This interpretation makes further sense in the context of Section 1.450's discussion of an "entity or person," giving an example of a *Missouri* entity ("political subdivision *of this state*") and a *Missouri* person ("any public officer or employee *of this state*"). To adopt the district court's contrary conclusion requires extrapolating from examples "of this state" to entities "*not* of this state," and turns the doctrine of constitutional avoidance on its head.

B. The Eighth Circuit's Opinion Is Even More Sparse.

The Eighth Circuit made some effort to distance itself from the district court's curious findings.[9] App.9a-10a. Nevertheless, the panel agreed with the district court's conclusion, asserting that SAPA "purports to invalidate federal law in violation of the Supremacy Clause...." App.3a. But in a glaring omission, the Eighth Circuit never even began to explain *why* this is so. Indeed, the panel's entire Supremacy Clause analysis consists of a mere four short paragraphs of entirely conclusory statements. First, the panel recited excerpts from the Supremacy Clause, claiming that "Missouri does not seriously contest these bedrock principles...." App.9a. Second, the panel found that, "[w]hile there is no implied right of action under the Supremacy Clause," the United States may proceed under some "equitable tradition" the court believed exists. *Id.* (citing cases). Third, the panel recited Missouri's argument that "the State may constitutionally withdraw the authority of state officers to enforce federal law." App.10a. And finally, although agreeing that "Missouri has the power to withhold state assistance," the panel concluded that this "does not mean the State may do so by purporting to invalidate federal law." *Id.* But while beginning and ending with the conclusion that SAPA "purports to invalidate federal law," at no point did the panel give any reasoned analysis for that decision. *See Rita v.*

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[9] For example, the panel interpreted Section 1.450 as only making "it unlawful for state officials," not any "entity," to enforce federal law. App.7a.

United States, 551 U.S. 338, 356 (2007) ("Judicial decisions are reasoned decisions. Confidence in a judge's use of reason underlies the public's trust in the judicial institution. A public statement of those reasons helps provide the public with the assurance that creates that trust.").

Although failing to explain its reasoning, it appears the panel took issue with SAPA's language that certain federal laws are "invalid to this State." *See* App.9a; App.10a. But declaring something "invalid to this State" is clearly not the same as "purport[ing] to invalidate federal law." *See* Pet. at 30 ("Missouri law does not 'nullify' anything.").[10] Rather, Missouri is doing nothing more than *Printz* allows — declaring that *the state* will not give effect to (enforce) certain federal laws. SAPA does not "invalidate" federal law any more than a passerby who does not stop to help a police officer wrestling with a suspect has "invalidated" state law. Rather, he has simply declined to help enforce it.

But what's more, the panel — just like the district court — carefully omitted the full language from the section of SAPA it quoted. Whereas the panel claimed

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[10] As Missouri's Petition explains, the panel "took no issue with what Missouri's law *does*, only with what the legislative findings *say*." *Id.* at 3 ("a law with the same effect, but different findings, would be permissible"). In other words, the panel objects to Missouri saying the quiet part out loud. *See id.* at 33 (panel "fault[s] Missouri for combining two things that are permissible if done independently … state officials … express[ing] an opinion that a federal law is unconstitutional," and "refrain[ing] from assisting with federal enforcement").

that "Missouri[] assert[ed] that federal laws regulating firearms are 'invalid to this State,'" what SAPA actually says is that "[a]ll federal acts … *that infringe on the people's right to keep and bear arms* … shall be invalid to this state...." App.56a (emphasis added). Thus, the panel faulted Missouri for nothing more than codifying that principle that "a law repugnant to the Constitution is void." *Marbury*, 5 U.S. at 180.

Although the district court's opinion sought to make it appear as if SAPA applies to federal officers and not merely state officials, the panel did not appear to share that understanding. Indeed, the panel appeared to acknowledge the limited scope of SAPA — "declar[ing] that these federal laws are 'invalid *to this state*,' 'shall not be recognized *by this state*,' and 'shall be specifically rejected *by this state*.'" App.2a-3a (emphases added) (citing Section 1.430); *see also* App.4a (emphases added) ("shall not be enforced *by this state*," including any "employee *of this state* or any political subdivision *of this state*"); App.9a (emphasis added) (faulting Missouri for "invalidat[ing] federal law *to itself*"). But the panel offered nothing to bridge the logical gap between SAPA *speaking for Missouri* and wholesale "invalidat[ion]" of federal law. On its face, the Missouri SAPA does not even attempt to nullify a federal law. *Cf.* App.34a. It does not create active resistance to federal law. And it is not a challenge to the supremacy of federal law. Rather, it is merely a statement of state policy, and an entirely legitimate determination to decline to use state resources to support federal laws and policies that the state believes conflict with the Second Amendment.

But the panel glossed over all this, asserting without explanation or authority that a state cannot interpret the U.S. Constitution *even for its own purposes*. That decision is an affront to the principles of federalism that undergird our form of government.[11] This Court should grant the Petition to correct the Eighth Circuit's egregious error, to reject the lower courts' inverse application of constitutional avoidance, and to reaffirm the principles laid down in *Printz*.

CONCLUSION

For the foregoing reasons, the petition for certiorari should be granted.

Respectfully submitted,

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[11] Indeed, the "Constitution created a legal system unprecedented in form and design, establishing two orders of government, each with its own direct relationship, its own privity, its own set of mutual rights and obligations to the people who sustain it and are governed by it." *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 838 (1995) (Kennedy, J., concurring).