IN THE COURT OF APPEALS OF TENNESSEE
AT JACKSON

STEPHEN L. HUGHES, et al.,	)	
	)	
Appellees,	)	
	)	
v.	)	**GIBSON COUNTY**
	)	**No. W2025-01327-COA-R3-CV**
BILL LEE, et al.,	)	
	)	
Appellants.	)	

ON APPEAL AS OF RIGHT FROM THE JUDGMENT
OF THE GIBSON COUNTY CHANCERY COURT

BRIEF OF APPELLANTS

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INTRODUCTION

The Tennessee Constitution vests in the General Assembly the "Legislative authority," Tenn. Const. art. II, § 3—the power to "enact any law . . . unless it clearly appears" unconstitutional, *Holly v. City of Elizabethton*, 241 S.W.2d 1001, 1004-05 (Tenn. 1951). Since Tennessee's founding, our legislature has used that power to construct a complex system of firearms regulation. Through dozens of amendments and recodifications, built upon the common law and judicial interpretations, the General Assembly has created a comprehensive code of firearms laws. This case concerns the foundational statute of that regime—the Going Armed Statute, Tenn. Code Ann. § 39-17-1307—and a law that imposes protections for a sensitive area—the Guns-in-Parks Statute, Tenn. Code Ann. § 39-17-1311. These laws reflect the General Assembly's continually evolving effort to protect Tennesseans while respecting their right to protect themselves.

The current system is not perfect. In light of the United States Supreme Court's attention on the Nation's historical traditions of firearms regulation, *New York State Rifle & Pistol Assoc., Inc. v. Bruen*, 597 U.S. 1, 17 (2022), some applications of Tennessee's regulatory system are constitutionally problematic. For example, Tennessee's law enforcement and courts should hesitate to apply the Going Armed Statute to criminalize the carrying of a rifle on a country road for self-defense. But many applications remain undoubtedly constitutional. There should be no constitutional controversy over prohibiting the carry of grenades and bombs in the middle of a city, or requiring an easy-to-

obtain, shall-issue permit to bring a gun to a park regularly frequented by children.

Ultimately, this case is not about sorting all the hypothetical applications of Tennessee's firearms laws into abstract categories of constitutionality. It's about whose job it is to correct the shortcomings of Tennessee's firearms laws and in what context they may do so. At Plaintiffs' behest, the chancery court claimed all the power for itself, facially and universally striking two criminal statutes from the Code even though both statutes are "constitutional in some of [their] applications." *United States v. Rahimi*, 602 U.S. 680, 693 (2024). Its all-or-nothing approach ignored longstanding restraints on the judicial power: the limited jurisdiction of chancery courts, the high bar for facially invalidating presumptively constitutional statutes, and the principle that a court only decides the rights and obligations of the parties before it. In doing so, the chancery court deprived the General Assembly, and thereby the people of Tennessee, the opportunity to address the deficiencies of Tennessee's firearms statutes while preserving important safety measures.

That was wrong. How to correct the shortcomings that *Bruen* has revealed "is a question for the legislature, and not the courts." *Holly*, 241 S.W.2d at 1005. While Tennessee courts (and officials) should always refuse to apply statutes unconstitutionally to the parties before them in cases over which they have jurisdiction, the chancery court had no authority to universally declare two criminal statutes "void, and of no effect." (VII, 887.) This Court should reverse and leave the General Assembly to continue its centuries-long refinement of the firearms

statutes through the political process, with the trial courts intervening only where a specific plaintiff brings suit showing a particular application of the law runs afoul of a constitutional limit.

STATEMENT OF THE CASE AND FACTS

A. Legal Background

The Tennessee Constitution guarantees citizens "the right to keep and to bear arms for their common defense; but the Legislature shall have power, by law, to regulate the wearing of arms with a view to prevent crime." Tenn. Const. art I, § 26. This provision protects "the same rights" as the Second Amendment to the U.S. Constitution. *Andrews v. State*, 50 Tenn. 165, 177 (1871). Thus, "the meaning of the one, will give [courts] an understanding of the purpose of the other." *Id.* at 183.

For decades, courts "fail[ed] to protect the Second Amendment to the same extent that they protect other constitutional rights," treating the right to bear arms as a "constitutional orphan." *Silvester v. Becerra*, 583 U.S. 1139 (2018) (Thomas, J., dissenting from the denial of certiorari). Unfortunately, Tennessee has its own part in that history. *See District of Columbia v. Heller*, 554 U.S. 570, 613 (2008) (citing *Aymette v. State*, 21 Tenn. 154, 158 (1840) (construing the right to keep and bear arms as a political right)). But no more. It is now settled that the Second Amendment—and thus, the Tennessee Constitution—protects an individual right to possess and carry a handgun for self-defense. *Bruen*, 597 U.S. at 8-10; *Heller*, 554 U.S. at 635.

In *Bruen*, the Supreme Court clarified the appropriate method for determining whether a modern firearm law violates the Second

Amendment. 597 U.S. at 17. When the "plain text" of the Second Amendment covers an individual's conduct, the "government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation." *Id.* One way to carry that burden is to identify a constitutionally sound historical analogue that is "relevantly similar" to the modern firearm regulation in terms of "how and why the regulations burden a law-abiding citizen's right to armed self-defense." *Id.* at 29. But the government need not identify a "historical twin" for a modern regulation to "pass constitutional muster." *Id.* at 30.

More recently, in *Rahimi*, the Supreme Court cautioned lower courts against applying *Bruen's* framework hypercritically. 602 U.S. at 691. "[T]he appropriate analysis involves considering whether the challenged regulation is consistent with the *principles* that underpin our regulatory tradition." *Id.* at 692 (emphasis added). Thus, if a modern firearm law "comport[s] with the principles underlying the Second Amendment," it will "pass constitutional muster." *Id.* at 692. *Rahimi* also confirmed that a party asserting a facial constitutional challenge to a firearm statute must "establish that no set of circumstances exists under which the Act would be valid." *Id.* at 693 (quoting *United States v. Salerno*, 481 U.S. 739, 745 (1987)).

B. Statutory Background

1. Going Armed Statute

The Going Armed Statute prohibits, with many convoluted exceptions and defenses, carrying a firearm "with the intent to go armed."

Tenn. Code Ann. §§ 39-17-1307(a)(1). This statute traces back to the Founding era. And its restrictions always prohibited carrying weapons with some variety of "the intent to go armed."

Public-carry laws. Tennessee became a State in 1796. Just five years later, in 1801, the General Assembly enacted a law requiring "any person who would 'publicly ride or go armed to the terror of the people, or privately carry any dirk, large knife, pistol or any other dangerous weapon, to the fear or terror of any person' to post a surety." *Bruen*, 597 U.S. at 50 (quoting 1801 Tenn. Acts pp. 260-61). "Otherwise, his continued violation of the law would be 'punished as for a breach of the peace, or riot at common law.'" *Id.*

In 1821, Tennessee enacted another law prohibiting the carrying of certain weapons, including "belt or pocket pistols, either public or private," except while traveling. 1821 Tenn. Acts ch. 13, p. 15. In other words, the law prohibited both open and concealed carry of handguns. The prohibition on open carry was "uniquely severe" compared to other States' laws in the early nineteenth century, which typically only "proscribed the *concealed* carry of pistols and other small weapons." *Bruen*, 597 U.S. at 52-54 (emphasis added).

The Code of 1858—Tennessee's first official code—preserved both the 1801 and 1821 laws restricting public carry. First, the Code provided that "[n]o person shall publicly ride or go armed to the terror of the people; or privately carry any dirk, large knife, pistol, or any other dangerous weapon, to the fear or terror of the people." Code of 1858, § 4753. Second, the Code provided that "[n]o person shall, either publicly or privately, carry a dirk, sword-cane, Spanish stiletto, belt or pocket

pistol, except on a journey to a place out of his county or State." *Id.* § 4757.

In 1870, the General Assembly amended the public-carry statute to prohibit the carrying of "revolver[s]." *See id.* 1870 Tenn. Acts ch. 13, § 1, p. 28. The next year, the Tennessee Supreme Court held that the prohibition on carrying "revolvers" violated Tenn. Const. art. I, § 26, but the Court upheld the ban on carrying other pistols and smaller weapons. *Andrews*, 50 Tenn. at 186-88. After that decision, the General Assembly amended the Act of 1870 by creating an exception for "an[y] army pistol, or such as are commonly carried and used in the United States Army" so long as they were carried "openly in [one's] hands." 1871 Tenn. Pub. Acts ch. 90, § 1.

Intent to go armed. Although the Act of 1871 contained no mens rea requirement, courts held that a person must have "the intent of going armed" to violate it. *Kendall v. State*, 101 S.W. 189, 189 (Tenn. 1907); *see also Heaton v. State*, 169 S.W. 750, 751 (Tenn. 1914) ("To constitute the carrying criminal, the intent with which it is carried must be that of going armed, or being armed, or wearing it for the purposes of being armed."). Carrying with "the intent to go armed" meant that the weapon was "readily accessible for use in the carrying out of purposes either offensive or defensive." *Kendall*, 101 S.W. at 189; *see also Moorefield v. State*, 73 Tenn. 348 (1880).

Thus, the public-carry statute applied to persons going armed offensively—menacing the public by "bearing arms in a way that spreads 'fear' or 'terror' among the people," *Bruen*, 597 U.S. at 50—and to persons

who "ha[ve] armed [themselves] solely for the purpose of self-defense." *Heaton*, 130 Tenn. 163. But if a person lacked "the intent or purpose of being or going armed," e.g., carrying a firearm to transport it, "the offense described in this statute can not be committed." *Page v. State*, 50 Tenn. 198, 198 (1871).

The Going Armed Statute. In 1932, the General Assembly incorporated the common-law "intent to go armed" requirement into the public-carry statute itself. Code of 1932, § 11007. After a series of further amendments, including extending the statute's coverage to all "firearms," the Going Armed Statute was relocated to Tenn. Code Ann. § 39-17-1307(a). *See, e.g.*, Tenn. Code Ann. § 39-4901 (1956) (repealed); Tenn. Code Ann. § 39-6-1701(a) (1982) (repealed); 1989 Tenn. Pub. Acts, c. 591, § 1.

Under the Going Armed Statute, "[a] person commits an offense who carries, with the intent to go armed, a firearm or a club." Tenn. Code Ann. § 39-17-1307(a). "Firearm" means "[a]ny weapon," other than an antique firearm, "that will or is designed to or may readily be converted to expel a projectile by the action of an explosive." Tenn. Code Ann. § 39-11-106(a)(13)(A)(i), (B). This definition encompasses "destructive device[s]" such as a bombs, grenades, rockets, and missiles. *Id.* § 39-11-106(10), (13)(A)(iv). Thus, in its modern form, the Going Armed Statute broadly prohibits carrying handguns, rifles, and dangerous items like grenades or bombs with the intent of going armed offensively or defensively except as otherwise provided.

Exceptions and defenses. Over the last decade, the General Assembly has narrowed the reach of the Going Armed Statute. The

process began by passing modest carveouts for individuals "carrying or possessing a firearm, loaded firearm, or firearm ammunition in a motor vehicle or boat." *Id.* § 39-17-1307(e). Then, in 2021, the General Assembly passed the Permitless Carry Bill, which exempts all Tennesseans over the age of 21[1] who lawfully possess a handgun, openly or concealed, in a place where they are lawfully present. *Id.* § 39-17-1307(g); 2021 Tenn. Pub. Acts, ch. 108, § 1.

Numerous defenses further restrict the statute's sweep. For example, law-abiding citizens may carry (1) handguns, if they possess a concealed handgun carry permit, enhanced handgun carry permit, temporary handgun carry permit, or have been granted an order of protection within the last 21 days; (2) firearms at their residence, business, or premises, or incident to lawful hunting, trapping, fishing, camping, sport shooting or other lawful activity; and (3) rifles or shotguns while engaged in the lawful protection of livestock from predatory animals. *Id.* § 39-17-1308(a); *see id.* §§ -1351 (enhanced handgun carry permit), -1365 (temporary handgun carry permit), -1366 (concealed handgun carry permit), 36-3-626 (carrying after grant of order of protection).

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[1] The Commissioner of the Tennessee Department of Safety and Homeland Security has agreed not to enforce the Permitless Carry Bill and licensing statutes in a way that "prevent[s] individuals aged eighteen to twenty years old from carrying handguns or obtaining permits to carry handguns on the basis of age alone." Settlement Agreement, *Beeler v. Long*, No. 3:21-cv-152, PageID# 378 (M.D. Tenn. Mar. 24, 2023), ECF No. 50-1. (VI, 721.)

Finally, "[a] person shall not be *charged with* or convicted of" unlawful possession of a firearm "if the person possessed, displayed or employed a handgun in justifiable self-defense or in justifiable defense of another during the commission of a crime in which that person or the other person defended was a victim." *Id.* § 39-17-1322(a) (emphasis added).

2. Guns-in-Parks Statute

Tennessee has long restricted the public carry of firearms in sensitive places. *See* Patrick J. Charles, *The Second Amendment and Heller's "Sensitive Places" Carve-Out Post-Rahimi: A Historiography, Analysis, and Basic Framework*, 58 UIC L. Rev. 813, 868 (2025) (discussing Tennessee's 1869 law banning weapons at "any election . . . fair, race course, or other public assembly of the people"). The Guns-in-Parks Statute builds on that tradition by prohibiting certain weapons on the grounds of any public park, playground, civic center, or other government building used for recreational purposes. Tenn. Code Ann. § 39-17-1311(a). But unlike many States, which have historically banned *all* guns in parks, (V, 650-54), Tennessee's law exempts permit holders, making it easier than ever to carry a handgun into a public park.

Parks as sensitive places. Since the Founding, state and local governments have banned the carrying of firearms in "sensitive places," like "legislative assembles, polling places, and courthouses." *Bruen*, 597 U.S. at 30. Public parks did not exist at the time of the Founding, (VI, 666-67), but firearms have been almost uniformly prohibited in parks since they emerged as recreational spaces in the mid-1800s. (V, 650-55; VI, 679-82, 684-87, 689-93, 695-96.)

In 1858, Central Park—the first urban park in the Nation—banned firearms completely upon its opening. (VI, 680-81.) And this prohibition spread as more local parks opened across the country. (V, 631-35; VI, 681-87.) Although many local regulations have been lost to time, (V, 659), the record reflects that dozens of laws, regulations, and ordinances prohibited carrying firearms in local parks in the late eighteenth and early nineteenth centuries. (V, 631-35; VI, 679-82, 684-87.)

Once the park movement took hold at the national level, the federal government enacted the same pattern of firearm regulations. In 1875, the Mackinac National Park banned firearms "with no exceptions." (VI, 690.) Sequoia National Park, in 1880, and Yellowstone National Park, in 1894, banned firearms without written permission. (VI, 689-90.) Yosemite National Park also banned firearms sometime before 1897. (VI, 690.) Upon the creation of the National Park Service, firearms were banned from all national parks in 1936. (VI, 691-92.)

Tennessee history tells the same story. Local governments were the first to enact firearm regulations in public parks. For example, in 1909, Memphis banned the public carry of firearms in parks without special permission. (VI, 685.) And Chattanooga went a step further in 1922 by banning firearms in parks entirely. (VI, 697.)

Later, Tennessee joined other States in establishing state parks. In 1935, the State Planning Commission adopted a plan to allocate land for forestry and recreational purposes with the same goal as parks around the nation: to "promote the health, safety, morals, order, convenience and welfare of the people." (VI, 695.) By the 1950s, there were 17 state parks in Tennessee. (VI, 695.) In the modern era, that number has exploded

to 59 state parks that see approximately 38.5 million visitors per year. (I, 536).

Guns-in-Parks Statute. Against that backdrop, the General Assembly enacted the Guns-in-Parks Statute. 1989 Tenn. Pub. Acts, c. 591, § 1. In its current form, the Guns-in-Parks Statute incorporates the "intent to go armed" element and restricts the possession and carrying of weapons in sensitive places, like public parks:

> It is an offense for any person to possess or carry, whether openly or concealed, with the intent to go armed, any weapon prohibited by § 39-17-1302(a), not used solely for instructional, display or sanctioned ceremonial purposes, in or on the grounds of any public park, playground, civic center or other building facility, area or property owned, used or operated by any municipal, county or state government, or instrumentality thereof, for recreational purposes.

Tenn. Code Ann. § 39-17-1311(a).

On its face, this statute only restricts the possession or carrying of "any weapon prohibited by § 39-17-1302(a)," such as "explosive[s]," "machine gun[s]," "knuckles," and "[a]ny other implement for infliction of serious bodily injury or death that has no common lawful purpose." Id. § 39-17-1302(a). But nearly 20 years ago, in non-binding formal opinions, the Attorney General's Office interpreted the Guns-in-Parks Statute to apply to all firearms, including handguns. *See* Tenn. Att'y Gen. Op. 08-26, 2008 WL 474305 (Feb. 12, 2008); Tenn. Att'y Gen. Op. 07-148, 2007 WL 4896937 (Oct. 22, 2007). The General Assembly amended the statute in accordance with those interpretations. *See, e.g.*, 2009 Tenn. Pub. Acts, ch. 428, §§ 1, 2 (exempting handgun carry permit

holders from criminal liability). Plaintiffs and the court below similarly construed the statute to prohibit handguns.

The Guns-in-Parks Statute also has many exceptions. Tenn. Code Ann. § 39-17-1311(b)(1). Most notably, in 2015, the General Assembly amended the statute to allow permit holders to carry handguns in all public parks, removing the authority of local governments to prohibit permit holders from carrying handguns in protected areas. 2015 Tenn. Pub. Acts, ch. 250, § 1. Tennesseans may now carry a handgun in a public park, natural area, historic park, nature trail, campground, forest, greenway, waterway, or similar government-owned public spaces with a handgun carry permit so long as they are not in the immediate vicinity of a school event on an athletic field. Tenn. Code Ann. § 39-17-1311(b)(1)(H). They also may carry any firearm while lawfully hunting on public hunting lands, while traversing a park to access a public or private hunting land, while attending a gun and knife show, while picking up passengers, or while sport or target shooting. *Id.* § -1311(b)(1)(J).

The State makes it easy to obtain a permit for those who wish to carry a handgun in public parks. Tennessee has a "shall issue" permitting scheme that has "narrow, objective, and definite standards" to guide licensing officials. *Bruen*, 597 U.S. at 38 n.9 (citation omitted); *see* Tenn. Code Ann. § 39-17-1351 (enhanced handgun carry permit); Tenn. Code Ann. § 39-17-1366 (concealed handgun carry permit). After satisfying these minimal requirements, there are virtually no barriers to carrying handguns in public parks and many other sensitive places.

C. Procedural History

Plaintiffs—three gun owners and two gun-rights organizations—sued the Governor and the Attorney General in Gibson County Chancery Court seeking declaratory and injunctive relief. (I, 1-47.) Their complaint alleged that the Going Armed and Guns-in-Parks Statutes facially violate Article I, section 26 of the Tennessee Constitution. (I, 21.)

The Tennessee Supreme Court assigned a three-judge panel to the case. (I, 91; *see* Tenn. Code Ann. § 20-18-101(a).) Plaintiffs then amended their complaint by naming additional defendants: Tennessee Department of Safety and Homeland Security Commissioner Jeff Long, Tennessee Department of Environment and Conservation Commissioner David Salyers, Gibson County Sheriff Paul Thomas, District Attorney General Frederick Agee, and the State of Tennessee.[2] (I, 119-49.)

Defendants opposed Plaintiffs' temporary injunction motion, arguing that the chancery court—a court of equity—lacked jurisdiction to enjoin criminal statutes. (III, 421-26.) After a hearing, the chancery court agreed and denied injunctive relief. (IV, 451-59; IX.) The panel recognized that, under Tennessee Supreme Court precedent, a chancery court "has no power to enjoin the enforcement of criminal statutes." (IV, 453, 456 (citing *Clinton Books, Inc. v. City of Memphis*, 197 S.W.3d 749, 752 (Tenn. 2006)).) The panel also rejected Plaintiffs' argument that the

[2] The Gibson County Sherrif waived his right to respond to the amended complaint and consented to the court's resolution of the case. (III, 361-62.) Plaintiffs voluntarily dismissed their claims against the State of Tennessee. (III, 406; IV, 447-50.)

three-judge-panel statute "create[d] a new court" or "annul[led]" the "well-settled rule" that chancery courts may not enjoin criminal statutes. (IV, 456.)

But the chancery court went one step further. Despite lacking jurisdiction to grant *injunctive* relief, the court nevertheless forecast that it had authority to issue a *declaratory* judgment. (IV, 456-57.) Because the three-judge-panel statute says that a court must "hear[] and determine[]" cases, Tenn. Code Ann. § 20-18-101(a)(1), the court reasoned that it must have authority to issue declaratory judgments, even regarding criminal statutes. (IV, 456.) Therefore, the court denied Plaintiffs' motion for a preliminary injunction but insisted it would entertain their request for declaratory relief. (IV, 456-57.)

Both parties moved for summary judgment. (IV, 471-509, 518-45; V, 546-663; VI, 664-816; VII, 817-39.) Plaintiffs argued that the Going Armed and Guns-in-Parks Statutes facially violate Article I, section 26 of the Tennessee Constitution. (IV, 497-509.) Accordingly, they sought a declaration that the statutes are void in all applications. (I, 148; IV, 508.)

Defendants contested the chancery court's jurisdiction to declare the constitutionality of criminal laws. (V, 593-96.) On the merits, Defendants argued that *Rahimi* required Plaintiffs to show that "no set of circumstances exists under which the [laws] would be valid." (V, 568.) And both statutes had at least "some" constitutional applications, *Rahimi*, 602 U.S. at 693—e.g., to grenades and bombs, to those who terrorize the public, and to those without permits—which doomed Plaintiffs' facial challenges. (V, 566-85.) Defendants also produced two expert reports establishing a historical tradition of banning guns in

parks. (V, 636-63; VI, 664-719.) Finally, they argued that Plaintiffs' request for universal relief exceeded the chancery court's authority under the Declaratory Judgment Act. (V, 596-99.)

Ultimately, the chancery court ruled for Plaintiffs. (VII, 846-889.) On jurisdiction, the court maintained that it had authority to declare the constitutionality of criminal laws, despite lacking authority to enjoin their enforcement. (VII, 857-61.) On the merits, the court purported to apply a "plainly legitimate sweep" test to rule that the Going Armed and Guns-in-Parks Statutes facially violate Article I, section 26 of the Tennessee Constitution. (VII, 862-85.) On a remedy, the court issued "a declaratory invalidation of statutory text" and applied it universally to non-parties. (VII, 885-86.)

Defendants timely appealed and moved for a stay of the judgment pending appeal. (VII, 890-900.) This Court granted Defendants' stay motion. (VII, 912-18, 925.)

STANDARD OF REVIEW

This Court reviews a chancery court's subject matter jurisdiction and summary-judgment decisions de novo. *Pharma Conference Educ., Inc. v. State*, 703 S.W.3d 305, 311 (Tenn. 2024); *New v. Dumitrache*, 604 S.W.3d 1, 14 (Tenn. 2020). When analyzing constitutional issues, the Court "indulge[s] every presumption and resolve[s] every doubt in favor of constitutionality." *Lynch v. Jellico*, 205 S.W.3d 384, 390 (Tenn. 2006) (quotations omitted). And when, as here, a party "brings a facial challenge," the "presumption of constitutionality applies with even greater force." *Waters v. Farr*, 291 S.W.3d 873, 882 (Tenn. 2009); *see also Fisher v. Hargett*, 604 S.W.3d 381, 398 (Tenn. 2020). In such cases, the

party "must establish that no set of circumstances exists under which the statute, as written, would be valid." *Fisher*, 604 S.W.3d at 398 (citing *Salerno*, 481 U.S. at 745); *see also Rahimi*, 602 U.S. at 693.

ARGUMENT

The Going Armed and Guns-in-Parks Statutes have their flaws, but the chancery court exceeded its authority by purporting to erase these foundational firearm statutes from the Tennessee Code. First, Plaintiffs sued in the wrong court. Chancery courts have no jurisdiction to declare the constitutionality of criminal laws, which they lack authority to enforce. The panel below disregarded centuries of precedent by concluding otherwise. Second, jurisdiction aside, the panel erred by relying on an inapplicable "plainly legitimate sweep" test to declare the Going Armed and Guns-in-Parks Statutes *facially* unconstitutional, even though both statutes have "some" constitutional applications. *Rahimi*, 602 U.S. at 693. And third, the chancery court exceeded constitutional and statutory limits on judicial power by granting declaratory relief to non-parties. This Court should reverse.

I. The Chancery Court Lacked Jurisdiction to Declare the Constitutionality of Criminal Laws.

Subject matter jurisdiction "is a threshold inquiry." *Johnson v. Hopkins*, 432 S.W.3d 840, 844 (Tenn. 2013). It "confines judicial power to the boundaries drawn in constitutional and statutory provisions." *Turner v. Turner*, 473 S.W.3d 257, 270 (Tenn. 2015). For centuries, the law has drawn a sharp distinction between courts of law and equity. Chancery courts—courts of equity—have no criminal jurisdiction whatsoever. And that ends this case.

A. Chancery courts have no criminal jurisdiction.

The Tennessee Constitution empowers the General Assembly to establish "[t]he jurisdiction of the Circuit, Chancery[,] and other Inferior Courts." Tenn. Const. art. VI, § 8; *see also* Tenn. Const. art VI, § 1. The General Assembly exercised that constitutional authority by creating trial courts and vesting them with "judicial power." Tenn. Code Ann. §§ 16-1-101, 16-2-501, -506. These statutes preserve the "constitutional and historical distinctions between chancery court and circuit court." *Id.* § 16-2-501(b).

Chancery courts have both "inherent" and "statutory" jurisdiction. *J.W. Kelly & Co. v. Conner*, 123 S.W.622, 627 (Tenn. 1907); *see also* Henry R. Gibson, *Gibson's Suits in Chancery* §§ 1.01, 1.02, 1.04 (8th ed. 2004). The court's inherent jurisdiction flows from "[t]he jurisdiction and procedure of the High Court of Chancery of England," which the State of Tennessee adopted. *J.W. Kelly & Co.*, 123 S.W. at 622; *see also* Tenn. Code Ann. § 16-11-101 ("The chancery court has all the powers, privileges and jurisdiction properly and rightfully incident to a court of equity."). The chancery court also exercises statutory jurisdiction where provided by the legislature. *J.W. Kelly & Co.*, 123 S.W. at 622. Thus, the chancery court's jurisdiction extends, with limited exceptions, to "all civil causes of action" and "all cases of an equitable nature." Tenn. Code Ann. §§ 16-11-102, -103.

On the other hand, "the circuit court is a court of general jurisdiction," which "administer[]s right and justice according to law." *Id.* § 16-10-101. Although the circuit court has concurrent jurisdiction with the chancery court in *civil* cases, *id.* § 16-11-102(a), circuit courts and

criminal courts have "exclusive original jurisdiction" in *criminal* cases. *Id.* § 16-10-102; *see also id.* § 16-2-506 (establishing criminal courts in certain judicial districts).

The Tennessee Supreme Court has strictly policed these distinctions. Over a century ago, the Court reaffirmed the "rule of almost universal application," that "[courts of equity] have no jurisdiction to give relief in criminal cases."[3] *J.W. Kelly & Co.*, 123 S.W. at 627-28. There, the plaintiffs filed suit in chancery court seeking a declaration and an injunction protecting them from prosecution under a criminal statute prohibiting the sale of liquor within four miles of a school. *Id.* at 623-25. Although the chancery court ruled that it had jurisdiction, the Supreme Court reversed. *Id.* at 625, 637. "Courts of equity," the Supreme Court held, "are not constituted to deal with crime and criminal proceedings." *Id.* at 635. Plaintiffs could "have the statute construed and its validity determined in any criminal action that may be brought against them." *Id.* at 636. Any other rule, the Court explained, "would result in much confusion and embarrassment in preserving peace and order, and enforcing the police power of the state generally." *Id.* at 637.

Based on that longstanding rule, the Supreme Court and this Court have held that chancery courts lack jurisdiction to declare:

- a criminal ordinance void, *Spoone v. Mayor & Aldermen of Town of Morristown*, 206 S.W.2d 422, 423-24 (Tenn. 1947);

[3] There is a narrow "property exception" where, unlike here, relief "is necessary to protect the equity court's jurisdiction over the property." *Clinton Brooks, Inc.*, 197 S.W.3d at 754; *see also Erwin Billiard Parlor v. Buckner*, 300 S.W. 565, 566 (Tenn. 1927).

- the application of gaming-device laws to pinball machines, *Earhart v. Young*, 124 S.W.2d 693, 694 (Tenn. 1939);
- a criminal court rule unconstitutional, *Memphis Bonding Co. v. Criminal Court of Tenn. 30th Dist.*, 490 S.W.3d 458, 465 (Tenn. Ct. App. 2015);
- a criminal judgment unconstitutional, *Carter v. Slatery*, No. M2015-00554-COA-R3-CV, 2016 WL 1268110, at *5-7 (Tenn. Ct. App. Feb. 19, 2016); and
- a criminal judgment unenforceable, *Frazier v. Slatery*, No. E2020-01216-C, 2021 WL 4945235, at *4-6 (Tenn. Ct. App. Oct. 25, 2021).

This case is no different. The chancery court lacked jurisdiction to declare the constitutionality of *criminal* laws.

And yet, the court below disagreed. The panel distinguished *enjoining* criminal proceedings—which the court agreed was beyond its authority—and *declaring* criminal statutes unconstitutional—which the court claimed was within its authority. (VII, 859.) The panel claimed, for example, that the Supreme Court had only reversed chancery courts' declarations concerning "criminal court rules or criminal judgments—exercises of the criminal court's authority—not a legislatively enacted statute." (VII, 859.)

Not so. First, the chancery court overlooked that *J.W. Kelly & Co.*—the seminal case on this issue—involved a request for both injunctive *and* declaratory relief. 123 S.W. at 625 (seeking a "declar[ation]" regarding the statute's construction and a "decree[]" that it was "unconstitutional and void"). That case also involved a criminal *statute*, the "Four-Mile Law of 1909," not just "criminal court rules or criminal judgments." (VII,

859.) Although the Supreme Court recognized "the public interest in the proper construction of the statute in question," it declined to "usurp[] jurisdiction" by issuing a declaratory judgment after holding that the chancery court lacked jurisdiction do so. *Id.* at 637.

Second, the chancery court acknowledged—but brushed aside—the Supreme Court's decision in *Spoone*, which affirmed the dismissal of a complaint asking the chancery court "to enjoin the enforcement of [a city] *ordinance* . . . and to have the ordinance *declared void*." 206 S.W.2d at 423, 425 (emphasis added). Because *Spoone* only briefly referenced the plaintiffs' claim for declaratory relief, the panel below found the "immediate relevance of this holding to declaratory relief from a criminal statute . . . unclear." (VII, 860.) But *Spoone* was not "unclear"; it affirmed the chancery court's decision in its entirety, dismissing the claims for injunctive and declaratory relief based on the Court's prior decision in *J.W. Kelly & Co.*, which also involved both injunctive and declaratory relief. The chancery court erred by failing to follow this binding precedent.

B. Neither the Declaratory Judgment Act nor three-judge-panel statute confer criminal jurisdiction.

Because the chancery court lacked inherent jurisdiction to declare the constitutionality of criminal laws, the next question is whether it had statutory authority to do so. *J.W. Kelly & Co.*, 123 S.W. at 627. The chancery court ruled that the Declaratory Judgment Act and the three-judge-panel statute override the traditional divide between courts of law and equity. But that's not true.

Declaratory Judgment Act. Tennessee's Declaratory Judgment Act, Tenn. Code Ann. §§ 29-14-101 to -113, is based on the Uniform Declaratory Judgment Act of 1922. *Tenn. Farmers Mut. Ins. Co. v. DeBruce*, 586 S.W.3d 901, 905 (Tenn. 2019). Under the Declaratory Judgment Act, "[c]ourts of record within their respective jurisdictions have the power to declare rights, status, and other legal relations whether or not further relief is or could be claimed." Tenn. Code Ann. § 29-14-102(a).

The Declaratory Judgment Act creates a remedy, not a cause of action. That is, "a declaratory judgment action is a mere procedural device by which various types of substantive claims may be asserted." *Brackin v. Sumner Cnty.*, 814 S.W.2d 57, 61 (Tenn. 1991). Therefore, "[a] declaratory judgment is proper in chancery, but only if chancery could have entertained a suit of the same subject matter." *Zirkle v. City of Kingston*, 396 S.W.2d 356, 363 (Tenn. 1965).

Since its enactment, the Supreme Court has held that the Declaratory Judgment Act "was not intended to increase the jurisdiction of the chancery court" by allowing it to "enjoin prosecutions for the violation of penal statutes." *Parlor v. Buckner*, 300 S.W. 565, 566 (1927) (citing *Lindsey v. Drane*, 285 S.W. 705 (Tenn. 1926)). Instead, the Court explained, the Declaratory Judgment Act preserved the jurisdictional lines "so clearly defined and stated" in *J.W. Kelly & Co.* *Id.* Thus, chancery courts may not declare the constitutionality of criminal statutes unless necessary to protect "property rights." *Id.* As discussed, the Supreme Court and this Court have routinely applied that reasoning to

deny chancery courts the authority to declare the constitutionality of criminal statutes, ordinances, and rules.

Resisting this precedent, the chancery court latched onto this Court's unpublished decision in *Blackwell v. Haslam*, No. M2011-00588-COA-R3-CV, 2012 WL 113655, at *3-6 (Tenn. Ct. App. Jan. 11, 2012), *perm. app. denied* (Tenn. Apr. 11, 2012). (VII, 859.) In *Blackwell*, a felony drug offender sought a declaratory judgment in Davidson County Chancery Court regarding the effect of a Georgia pardon on his right to carry firearms under Tenn. Code Ann. § 39-17-1307(b)(1)(B). 2012 WL 113655, at *1. This Court held that the chancery court had subject matter jurisdiction, citing two cases where the Tennessee Supreme Court neglected to sua sponte dismiss declaratory judgment actions brought in chancery challenging criminal laws. *Id.* at *5 (citing *Davis-Kidd Booksellers, Inc. v. McWherter*, 866 S.W.2d 520 (Tenn.1993), and *Clinton Books, Inc.*, 197 S.W.3d 749). Although no party challenged the chancery court's jurisdiction in those cases, *Blackwell* concluded that the Supreme Court "clearly departed from the unequivocal" rule that declaratory relief is only proper where the chancery court could have entertained a suit of the same subject matter. *Id.* at *5-6.

This Court has repudiated *Blackwell* twice since—correctly recognizing that it "should not assume that subject matter jurisdiction existed based on the fact that the issue was not addressed." *Memphis Bonding Co.*, 490 S.W.3d at 467; *Carter*, 2016 WL 1268110, at *7; *see also Wygant v. Lee*, No. M2023-01686-SC-R3-CV, --- S.W.3d ---, 2025 WL 3537313, at *18 (Tenn. Dec. 10, 2025) (explaining that "the existence of

unaddressed jurisdictional defects has no precedential effect"). At a minimum, the published decision in *Memphis Bonding Co.* holding that the Declaratory Judgment Act does not provide an independent source of subject matter jurisdiction "shall be considered controlling authority for all purposes unless and until such opinion is reversed or modified by a court of competent jurisdiction." Tenn. Sup. Ct. R. 4(G)(2); *Memphis Bonding Co.*, 490 S.W.3d at 465, 467; *see also Barger v. Brock*, 535 S.W.2d 337, 341 (Tenn. 1976) ("[I]nferior courts must abide the orders, decrees, and precedents of higher courts."). The chancery court erred by ignoring that controlling authority.

Because the Declaratory Judgment Act does not expand a court's jurisdiction, the Act provided no basis for the chancery court to declare the constitutionality of the Going Armed and Guns-in-Parks Statutes in this case.

Three-Judge-Panel Statute. The three-judge-panel statute, like the Declaratory Judgment Act, does not alter background jurisdictional rules. So it does not grant chancery courts jurisdiction to declare the constitutionality of criminal laws.

In 2021, the General Assembly enacted the three-judge-panel statute, Tenn. Code Ann. § 20-18-101 et seq., which creates special procedures for constitutional challenges. Instead of a single judge deciding issues of statewide significance, the statute requires a "three judge panel" to "hear[] and determine[]" any "civil action" challenging the constitutionality of a statute, executive order, or administrative rule or regulation. *Id.* § -101(a)(1)(A). The suit must also "include[] a claim for declaratory judgment or injunctive relief," and be "brought against the

state, a state department or agency, or a state official acting in their official capacity." *Id.* § -101(a)(1)(B), (C).

Complementing this statutory framework, the Tennessee Supreme Court promulgated a rule for three-judge-panel cases. Tenn. Sup. Ct. R. 54. That rule makes clear that "civil actions" triggering the three-judge-panel statute must still commence by filing a complaint "in a trial court." *Id.* § 1(a). The presiding judge of the judicial district in which the complaint was filed then makes an initial determination as to whether the action qualifies under the three-judge-panel statute. *Id.* § 3(a). If the Supreme Court agrees, it will appoint two judges—one from each of the other grand divisions—to serve alongside the original trial judge "to hear and decide the case." *Id.* § 3(a)(4), (b).

The panel below seized upon the statutory command to "hear[] and determine[]" cases as a basis for assuming jurisdiction. (VII, 860-61.) Under the panel's reading, so long as a suit is brought under the three-judge-panel statute, a plaintiff need not demonstrate subject matter jurisdiction, personal jurisdiction, service, standing, venue, or anything other than the merits. That is wrong from start to finish.

First, this Court should reject the chancery court's interpretation because it clashes with the "natural and ordinary meaning" of the phrase "hear and determine." *State v. Curry*, 705 S.W.3d 176, 184 (Tenn. 2025). The ordinary use of "hear and determine" describes what a judge presiding over a case does—not the bounds of his power. *See* Tenn. Code Ann. § 17-2-112 (permitting a circuit judge to "hear and determine [a] cause as a chancellor" when the chancellor is incompetent); *id.* § 42-2-219

(requiring an agency to "hear and determine" an application "within a reasonable length of time"); *see also id.* §§ 9-8-305, 29-5-206, 54-12-109, 54-12-211. When the General Assembly wants to confer new jurisdiction, it says explicitly "jurisdiction is conferred." *See, e.g.*, *id.* §§ 53-14-113, 62-13-109, 62-19-127, 62-36-119 63-3-211, 63-31-111, 63-17-119, 68-11-1612; *see also id.* §§ 16-10-104 (using the word "jurisdiction"), 16-10-105 (same). Indeed, even this Court is authorized to "hear and determine cases" in panels of "three (3) judges each." *Id.* § 16-4-113. And this Court has never interpreted that language to override limits on its jurisdiction. *See, e.g.*, *Brooks v. Woody*, 577 S.W.3d 529, 530 (Tenn. 2018); *In re Estate of Boykin*, 295 S.W.3d 632, 635-36 (Tenn. Ct. App. 2008).

Thus, the ordinary meaning of "hear and determine" simply reflects the "obvious proposition" that "[a] court has jurisdiction to determine its own jurisdiction." *New v. Dumitrache*, 604 S.W.3d 1, 20 (Tenn. 2020) (cleaned up). In this case, the court should have "heard" Plaintiffs' claims but then "determined" that it lacked subject matter jurisdiction. Tenn. Code Ann. § 20-18-101(a)(1). It's that simple.

Second, the chancery court's reading of the three-judge-panel statute conflicts with longstanding presumptions regarding the effect of new legislation on existing law. "[N]ew statutes," like the three-judge-panel statute, "change pre-existing law only to the extent expressly declared." *Johnson*, 432 S.W.3d at 848. And "repeals by implication are disfavored." *Id.* Because the three-judge-panel statute is silent about altering background jurisdictional rules, courts should presume that the statute leaves those rules undisturbed. Simply put, the three-judge-

panel statute does not grant chancery courts jurisdiction over criminal matters that they otherwise would not have.

Third, the Supreme Court has provided that "civil actions" triggering the three-judge-panel statute must still commence by filing a complaint "in a trial court." Tenn. Sup. Ct. R. 54 § 1(a). This rule confirms that three-judge-panels are not separate courts with special jurisdiction. Constitutional challenges must still originate in the same "trial court" where the suit would normally be brought—here, circuit or criminal court. *See supra.* The three-judge-panel statute does not change that fact.

* * *

"[P]laintiffs are the masters of their complaint," *Binns v. Trader Joe's E., Inc.*, 690 S.W.3d 241, 255 (Tenn. 2024), and they sued in the wrong court. "Courts of equity are not constituted to deal with crime and criminal proceedings." *J.W. Kelly & Co.*, 123 S.W. at 635. The General Assembly "has vested exclusive and original jurisdiction" of those matters in the circuit and criminal courts. *Tennessee Downs, Inc. v. William L. Gibbons*, 15 S.W.3d 843, 848 (Tenn. Ct. App. 1999). And neither the Declaratory Judgment Act nor the three-judge-panel statute alter those jurisdictional rules. Because the chancery court lacked jurisdiction to declare the constitutionality of criminal statutes, this Court should reverse.

II. The Chancery Court Erred by Granting Summary Judgment to Plaintiffs.

If this Court reaches the merits, Defendants—not Plaintiffs—are entitled to summary judgment. There are no issues of material fact, and Defendants are entitled to judgment as a matter of law because Plaintiffs cannot carry their "heavy legal burden" of showing that there is "no set of circumstances" under which the Going Armed and Guns-in-Parks Statutes are valid. *Fisher*, 604 S.W.3d at 398; *see also Rahimi*, 602 U.S. at 693. Because both statutes have at least "some" constitutional applications, *Rahimi*, 602 U.S. at 693, Plaintiffs' claims fail as a matter of law.

A. Facial constitutional challenges require an extraordinary showing to obtain relief.

Plaintiffs stipulated that they were bringing facial—not as applied—constitutional challenges. (VII, 837, 848.) But "[r]ather than consider the circumstances in which [the statutes] [are] most likely to be constitutional," the court below "focused on hypothetical scenarios where [the statutes] might raise constitutional concerns." *Rahimi*, 602 U.S. at 701. Defendants agree that the Going Armed and Guns-in-Parks Statutes present serious constitutional concerns when applied in certain circumstances, but the trial court's application of the wrong legal standard "left the panel slaying a straw man." *Id.* This Court should apply the governing *Rahimi* standard and reject Plaintiffs' facial challenges.

Tennessee courts make plaintiffs clear an exceedingly high bar before declaring a statute unconstitutional "on its face." To prevail in a

facial challenge, the plaintiff must show "that there are no circumstances under which the statute, as written, may be found valid." *Fisher*, 604 S.W.3d at 396-97. That makes it "the most difficult challenge to mount successfully." *Lynch*, 205 S.W.3d at 390.

Because facial challenges tempt the judiciary to pick up the pen of the legislature, the high bar for those challenges protects the most important pillar of our Constitution: divided government. The Tennessee Constitution separates the powers of government "into three distinct departments." Tenn. Const. art. II, § 1. No member of one department "shall exercise any of the powers properly belonging to either of the others." Tenn. Const. art. II, § 2. Facial challenges undermine that separation of powers, "threaten[ing] to short circuit the democratic process by preventing laws embodying the will of the people from being implemented consistent with the Constitution." *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 451 (2008). To guard against that abuse, the presumption of constitutionality "applies with even greater force" when a party challenges the facial constitutionality of a statute. *Gallaher v. Elam*, 104 S.W.3d 455, 459 (Tenn. 2003).

The same principles, and the same no-constitutional-applications test, apply in this suit about the right to keep and bear arms. Indeed, the U.S. Supreme Court recently held that, in the Second Amendment context, a party asserting a facial challenge to a firearm statute must "establish that no set of circumstances exists under which the Act would be valid." *Rahimi*, 602 U.S. at 693. Put differently, "the Government need only demonstrate that [the statute] is constitutional in *some* of its

applications" for a law to survive a *facial* challenge. *Id.* (emphasis added).

Federal courts have implemented this test without difficulty in gun-rights cases since *Rahimi*. *See, e.g., United States v. Ogilvie*, 153 F.4th 1098, 1103 (10th Cir. 2025) (holding plaintiff's "facial challenge fails so long as the government shows that [the statute] is constitutional in some of its applications"); *LaFave v. County of Fairfax, Va.*, 149 F.4th 476, at 483 (4th Cir. 2025) (holding it is "enough for us to reject the facial challenge to the parks restriction" that there are preschools on park property); *United States v. Perez-Gallan*, 125 F.4th 204, 214 (5th Cir. 2024) (holding defendant's "facial challenge still fails because the provision is not inconsistent with the Second Amendment in *all* its applications"); *Wolford v. Lopez*, 116 F.4th 959, 984 (9th Cir. 2024) (applying *Rahimi*'s facial challenge standard to a prohibition on firearms in parks), *cert granted*, 2025 WL 2808808, at *1 (Oct. 3, 2025).[4]

Ignoring all this precedent, the chancery court "flipped" the burden to Defendants to "demonstrate a plainly legitimate sweep of the statute[s] as well as at least one constitutional application." (VII, 876, 872.) The trial court created this test by conflating and compounding various tests and burdens snipped from disparate precedent, much of which was inapposite.

[4] Notably, in *Wolford*, the U.S. Supreme Court declined review of the Ninth Circuit's holding that the respondents' sensitive place restrictions were facially constitutional, instead limiting review to whether States may ban permit holders from carrying firearms on private property without the property owner's express permission. *Id.*

Start with *Bruen*. There, the Supreme Court clarified that, when assessing Second Amendment claims, courts must first determine whether "the Second Amendment's plain text covers an individual's conduct." *See Bruen*, 597 U.S. at 24. If so, "[t]he government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation." *Id.* The Court never suggested, however, that this would displace decades of precedent placing the burden on plaintiffs to prove their facial constitutional challenges. To the contrary, *Rahimi* confirms that, in the final analysis, the plaintiff must show that "no set of circumstances exists under which the Act would be valid." *Rahimi*, 602 U.S. at 693.

The trial court's reliance on the "plainly legitimate sweep" test was similarly misguided. (VII, 849.) "In First Amendment cases," the Supreme Court "has lowered th[e] very high bar" for facial constitutional challenges. *Moody v. NetChoice, LLC*, 603 U.S. 707, 723 (2024). "In this singular context," the facial validity of a statute restricting free speech turns on whether "a substantial number of [the law's] applications are unconstitutional, judged in relation to the statute's plainly legitimate sweep." *Id.*; *see also Davis-Kidd Booksellers, Inc. v. McWherter*, 866 S.W.2d 520, 525 (Tenn. 1993) (applying plainly legitimate sweep test in a First Amendment case). This "overbreadth doctrine" is "unusual," *United States v. Hansen*, 599 U.S. 762, 769 (2023), and likely erroneous. *Id.* at 785 (Thomas, J., concurring). No court has expanded it beyond the First Amendment context.

In Second Amendment cases, the no-constitutional-applications test applies, *Rahimi*, 602 U.S. at 693, not the "unusual" plainly legitimate sweep test. *Hansen*, 599 U.S. at 769. Despite this, the trial court ignored *Rahimi*, citing it only twice: once to a concurrence and once in a string-cite to a block-quote discussing the role of analogy in the sensitive-places doctrine. (VII, 879, 885.) When given the chance to correct its error and stay its decision, the chancery court doubled down, claiming that it had appropriately "synthesized" various precedents. (VII, 914.) But once again, it ignored *Rahimi*, which sets the appropriate standard for adjudicating a facial challenge rooted in the Second Amendment. Under that standard, the Going Armed and Guns-in-Parks Statutes easily survive review because both statutes are constitutional in "some" of their applications. 602 U.S. at 693.

B. The Going Armed Statute is facially constitutional.

More than 20 years ago, this Court held that the Going Armed Statute "is a valid regulation of the carrying of firearms that does not contravene either the Second Amendment or Tenn. Const. Art. I, § 26." *Embody v. Cooper*, No. M2012-01830-COA-R3-CV, 2013 WL 2295671, at *1 (Tenn. Ct. App. May 22, 2013), *perm. app. denied* (Tenn. Oct. 31, 2013). Because *Embody* applied intermediate scrutiny, *id.* at *8, both parties agree that *Bruen's* refined methodology changes the calculus. (VII, 871.) Defendants also agree that the Going Armed Statute may not be constitutionally applied to law-abiding citizens possessing certain long guns, like semi-automatic rifles, for self-defense in at least some circumstances. But Plaintiffs got greedy. They asked for *facial* invalidation of the statute in *all* its applications. That claim fails as a

matter of law because the Going Armed Statute, as even Plaintiffs admit, has "some" constitutional applications. *Rahimi*, 602 U.S. at 693. This Court should reverse the trial court's erasure of the statute from the Tennessee Code.

At step one, *Bruen* requires the Court to determine whether the "plain text" of Article I, section 26 of the Tennessee Constitution "covers" the conduct regulated by the Going Armed Statute. 597 U.S. at 24. Plaintiffs' claim arguably fails at this threshold stage because the Going Armed Statute incorporates a broad definition of "firearm" that encompasses some dangerous and unusual weapons (like grenades and bombs), Tenn. Code Ann. § 39-11-106(a)(10), (13)(A)(i), (B), which may not even qualify as "arms" within the meaning of the Constitution. *Cf. Bianchi v. Brown*, 111 F.4th 438, 447-48 (4th Cir. 2024) (en banc); *Bevis v. City of Naperville*, 85 F.4th 1175, 1192-96 (7th Cir. 2023). *But see United States v. Bridges*, 150 F.4th 517, 524-25 (6th Cir. 2025) (applying dangerous and unusual weapon analysis at step two).

But assuming that Plaintiffs' claim survives step one, Defendants can easily show that the Going Armed Statute, at least in certain applications, "is consistent with the Nation's historical tradition of firearm regulation." *Bruen*, 597 U.S. at 24. For example, there is a robust historical tradition of prohibiting (1) dangerous and unusual weapons, and (2) carrying firearms *offensively* to terrorize the public. These are not "remote hypotheticals" that Defendants "dream[ed] up." (VII, 905.) They are explicitly rooted in the statutory text and constitutionally approved by Supreme Court precedent. The trial court

erred by disregarding these constitutional applications of the Going Armed Statute.

1. Dangerous and Unusual Weapons. The Going Armed Statute incorporates a broad statutory definition of "firearm," which includes "[a]ny weapon," other than an antique firearm, "that will or is designed to or may readily be converted to expel a projectile by the action of an explosive." Tenn. Code Ann. § 39-11-106(a)(13)(A)(i), (B). As discussed, this definition encompasses "destructive device[s]" such as a bombs, grenades, rockets, and missiles. *Id.* § 39-11-106(a)(10), (13)(A)(iv). Even if such weapons qualify as "arms" under the Constitution, there is a strong historical tradition of prohibiting them.

In *Heller*, the Supreme Court recognized a "historical tradition of prohibiting the carrying of 'dangerous and unusual weapons.'" 554 U.S. at 627 (citing 4 W. Blackstone Commentaries on the Laws of England 148-149 (1769)). Based on that historical tradition, the Court explained, the Second Amendment only protects weapons "'in common use at the time' for lawful purposes like self-defense." *Id.* at 624, 627 (quoting *United States v. Miller*, 307 U.S. 174, 179 (1939)). Conversely, "the Second Amendment does not protect those weapons not typically possessed by law-abiding citizens for lawful purposes, such as short-barreled shotguns." *Id.* at 625.

Bruen reaffirmed the "historical tradition" of prohibiting "dangerous and usual weapons." 597 U.S. at 47 (citing *Heller*, 554 U.S. at 627); *see also id.* at 72 (Alito, J., concurring) (noting that the Court did not "decide anything about the kinds of weapons that people may

possess"). So did *Rahimi*. 602 U.S at 691 ("Some jurisdictions banned the carrying of 'dangerous and unusual weapons.'"); *see also id.* at 735 (Kavanaugh, J., concurring).

The Going Armed Statute fits comfortably within that historical tradition—certainly at least as applied to bombs, grenades, rockets, and missiles. Tenn. Code Ann. § 39-11-106(a)(10), (13)(A)(iv). As other courts recognize, such weapons receive no constitutional protection under the Second Amendment. *See, e.g., United States v. Tagg*, 572 F.3d 1320, 1326 (11th Cir. 2009) (pipe bombs); *United States v. McCartney*, 357 Fed. App'x 73, 76 (9th Cir. 2009) (hand-grenades). Indeed, the U.S. Supreme Court has recognized that "grenades . . . are highly dangerous offensive weapons," and unlike handguns, there is no "long tradition" of private ownership of grenades for lawful purposes. *Staples v. United States*, 511 U.S. 600, 609-10 (1994). For this reason, "one would hardly be surprised to learn that possession of hand grenades is not an innocent act." *United States v. Freed*, 401 U.S. 601, 609 (1971). The same could be said for bombs, rockets, and missiles.

These weapons, which are analogous to machine guns, *United States v. Simien*, 655 F. Supp. 3d 540, 553 (W.D. Tex. 2023), are "dangerous" because they are "likely to cause serious bodily harm." *Bridges*, 150 F.4th at 525 (quoting Dangerous, Black's Law Dictionary (12th ed. 2024)). And they are not in common use for lawful purposes, like self-defense, precisely because they "inflict damage on a scale or in a manner disproportionate to the end of personal protection." *See id.* (quoting *Bianchi*, 111 F.4th at 451) (upholding federal machine gun ban).

Therefore, Tennessee may constitutionally prohibit the carriage of these dangerous and unusual weapons.

The trial court did not dispute this conclusion. To the contrary, it found that "Defendants . . . are *correct* that the statute might constitutionally apply to an individual carrying a grenade with the intent to go armed." (VII, 876 (emphasis added).) Nonetheless, the court declined to find that Defendants satisfied their "flipped burden under *Bruen*" to demonstrate the statute has a "plainly legitimate sweep." (VII, 876.) But that's wrong. Defendants carried their burden of identifying a historical tradition of prohibiting dangerous and unusual weapons; consequently, Plaintiffs failed to carry *their* burden of "establish[ing] that *no set of circumstances exists* under which the statute, as written, would be valid." *Fisher*, 604 S.W.3d at 398 (emphasis added). The trial court's application of an incorrect legal standard improperly relieved Plaintiffs of their "heavy legal burden" of showing that statute is facially invalid. *Id.*

Because the Going Armed Statute constitutionally applies to dangerous and unusual weapons, which are explicitly covered by the statutory definition of "firearm," there are at least "some" circumstances under which the statute is valid. *Rahimi*, 602 U.S. at 693. That alone dooms Plaintiff's facial challenge. *See id.*

2. Carrying Offensively. There is a centuries-long historical tradition of prohibiting the wearing of firearms "in a way that spreads 'fear' or 'terror' among the people." *Bruen*, 597 U.S. at 50. The Going Armed Statute is a direct byproduct of those historical "going armed"

laws. Although Tennessee's law admittedly sweeps broader than some historical going armed statutes—by prohibiting both offensive *and defensive* carry—no one can seriously dispute that it constitutionally prohibits *offensive* carry.

In *Bruen*, the Supreme Court explained that "[t]hroughout modern Anglo-American history, the right to keep and bear arms in public has traditionally been subject to well-defined restrictions governing the *intent* for which one could carry arms." 597 U.S. at 38 (emphasis added). After an extensive historical survey, the Court explained that the "thread" running through these early American "going armed" statutes is that "[t]hey prohibit bearing arms in a way that spreads 'fear' or 'terror' among the people." *Id.*

In *Rahimi*, the Supreme Court reaffirmed the historical tradition of intent-based restrictions on public carry. *Rahimi*, 602 U.S. at 697-99. "[G]oing armed laws," the Court explained, descended from statutes that "encompass[ed] the offense of 'arm[ing]' oneself 'to the Terror of the People.'" *Id.* at 697. In fact, prohibitions on fighting and going armed were often codified in the same statutes. *Id.* Because "going armed" tended to "disrupt[] the 'public order' and 'le[d] almost necessarily to actual violence,'" the law punished this offense with "forfeiture of the arms . . . and imprisonment." *Id.* (citing 4 Blackstone 149).

Tennessee's Going Armed Statute is a direct heir of these historical "going armed" laws. As early as 1801, Tennessee forbade "go[ing] armed to the terror of the people." *Bruen*, 597 U.S. at 50 (quoting 1801 Tenn. Acts pp. 260-61); *see also* Code of 1858, § 4753. In 1821, Tennessee

adopted a similar statute that broadly prohibited the public carry of "belt or pocket pistols," except while traveling. 1821 Tenn. Acts ch. 13, p. 15. Although that statute and its successor statutes dropped the phrase "to the terror of the people," Tennessee courts consistently construed the public-carry statute to require "the intent to go armed," meaning that the weapon was "readily accessible for use in the carrying out of purposes either *offensive* or defensive." *Kendall*, 118 Tenn. at 156 (emphasis added); *see also Moorefield*, 73 Tenn. at 348. As *Bruen* explains, going armed "offensively" is shorthand for the "common-law offense of bearing arms to terrorize the people." 597 U.S. at 46-47.[5]

The General Assembly incorporated this intent requirement into the public-carry statute, Code of 1932, § 11007, and, later, into the modern Going Armed Statute. Tenn. Code Ann. § 39-17-1307(a). Courts presume that the legislature is aware of judicial decisions interpreting its prior enactments, *Hayes v. Gibson Cnty.*, 288 S.W.3d 334, 337 (Tenn. 2009), and when "a word is obviously transplanted from another legal source, whether the common law or other legislation, it brings the old soil with it." *Rivkin v. Postal*, No. M1999-01947-COA-R3-CV, 2001 WL 1077952, at *7 (Tenn. Ct. App. Sept. 14, 2001); *see also Hansen*, 599 U.S. at 778. Thus, the Going Armed Statute's "intent to go armed" element

[5] Although Tennessee's 1801 statute, which prohibited going armed "to the terror of the people," did not contain the word "offensively," other States' going armed laws directly linked "offensive" carry with terrorizing the public. *Bruen*, 597 U.S. at 46, 64 (citing 1692 Mass. Acts and Laws no. 6, pp. 11-12; 1699 N. H. Acts and Laws ch. 1.; 1870 S.C. Acts p. 403, no. 288, § 4).

continues to prohibit both "offensive or defensive" carrying of firearms. *Kendall*, 118 Tenn. at 156.

Of course, the Going Armed Statute's application to "defensive" carry raises red flags. Under *Bruen*, States may not prohibit law-abiding citizens from carrying firearms in common use for self-defense. 597 U.S. at 10. So, applying the statute to carrying a semi-automatic rifle for self-defense on a country road would likely be unconstitutional. On the other hand, there is a strong historical tradition of prohibiting "offensive" carrying firearms to "terrify" the public. *Rahimi*, 602 U.S. at 697; *Bruen*, 597, U.S. at 46-50. Therefore, the Going Armed Statute constitutionally applies to those who carry offensively to terrorize the public. In fact, this is the heartland of historical "going armed" laws.

Faced with this evidence, the trial court accepted that "going armed" laws had "a considerable history in the Anglo-American tradition," and that "it would seem" the Going Armed Statute "is constitutional." (VII, 874.) Nevertheless, the court concluded that "'going armed' means something quite different in Tennessee from 'bearing arms in a way that spreads 'fear' or terror' among the people.'" (VII, 874.) After citing Tennessee precedent construing the "intent to go armed" requirement as encompassing both offensive and defensive carry, the court focused on the problematic applications of the statute (i.e., to defensive carry), instead of focusing on the constitutional applications of the statute (i.e., to offensive carry). (VII, 874-75.) That "left the panel slaying a straw man." *Rahimi*, 602 U.S. at 701.

At bottom, the Going Armed Statute is facially constitutional because it can be constitutionally applied to offensive carrying of

firearms. Tennessee has prohibited such conduct virtually since its inception as a State. If that doesn't qualify as a historical tradition, it is unclear what would.

Even under the "plainly legitimate sweep" test, which applies in the "singular context" of First Amendment claims, the Going Armed Statute is facially valid. *Moody*, 603 U.S. at 723. Overbreadth claims—even in the First Amendment context—are "disfavored" and "hard to win." *Id.* at 723, 744. "To justify facial invalidation, a law's unconstitutional applications must be realistic, not fanciful, and their number must be substantially disproportionate to the statute's lawful sweep." *Hansen*, 599 U.S. at 770. That carries a "heavy factual burden," *NetChoice, LLC v. Bonta*, 152 F.4th at 1002, 1020 (9th Cir. 2025). Courts need "a massive amount of information," *id.*, to conduct the "daunting, if not impossible, task," of weighing all a law's applications. *Moody*, 603 U.S. at 745 (Barrett, J., concurring).

Plaintiffs failed to provide that information. They offered no proof quantifying the proportion of constitutional applications to the supposedly unconstitutional applications, let alone weighing them. There is no dispute that the statute constitutionally applies to dangerous weapons and to anyone carrying a firearm offensively to terrorize the public. The Going Armed Statute has been in place for nearly a century, and Plaintiffs have neither identified a substantial number of its unconstitutional applications nor explained how those applications outnumber its constitutional applications.

Reality undercuts the trial court's speculative concerns about the law's unconstitutional applications in relation to its plainly legitimate sweep. The statute is facially valid even under this less-demanding, inapplicable test.

* * *

The Going Armed Statute is not perfect. In some ways, it's a relic of the past, which, if fully enforced, would unconstitutionally burden citizens' right to keep and bear arms in certain applications. The General Assembly can—and should—address those deficiencies by amending the statute. But the trial court overstepped by effectively erasing the statute from the Code. Despite its flaws, the Going Armed Statute retains a constitutional core: prohibiting offensive carrying of firearms in a way that spreads fear or terror, and prohibiting the carriage of dangerous and unusual weapons, such as bombs and grenades. Plaintiffs failed to show that there are "no set of circumstances" under which the statute would be valid, *Rahimi*, 602 U.S. at 693.

C. The Guns-in-Parks Statute is facially constitutional.

Plaintiffs likewise cannot "establish that no set of circumstances exists" under which the Guns-in-Parks Statute would be valid. *Rahimi*, 602 U.S. at 693. At minimum, the Guns-in-Parks Statute constitutionally applies to (1) dangerous and unusual weapons explicitly identified in the statute, (2) people carrying firearms offensively, assuming the statute does cover carriage of all firearms, (3) non-permit holders, and (4) sensitive places, like public parks, public spaces used for elections, and areas used by children. Whatever its faults, the Guns-in-Parks Statute is not *facially* unconstitutional.

1. Dangerous and Unusual Weapons. Like the Going Armed Statute, the Guns-in-Parks Statute also constitutionally applies to dangerous and unusual weapons. On its face, the Guns-in-Parks Statute only applies to "any weapon prohibited by § 39-17-1302(a)," Tenn. Code Ann. § 39-17-1311(a), such as "explosive[s]," "machine gun[s]," "knuckles," and "[a]ny other implement for infliction of serious bodily injury or death *that has no common lawful purpose*." Tenn. Code Ann. § 39-17-1302(a) (emphasis). As discussed, the Supreme Court has identified a historical tradition of prohibiting weapons not "'in common use at the time' for lawful purposes like self-defense." *Heller*, 554 U.S. at 624, 627 (quoting *Miller*, 307 U.S. at 179). So if the statute only applies to weapons "that ha[ve] no common lawful purpose," Tenn. Code Ann. § 39-17-1302(a), then it necessarily falls within the historical tradition of prohibiting dangerous and unusual weapons. *See Heller*, 554 U.S. at 624, 627.

Citing to an Attorney General opinion, the trial court concluded that the Guns-in-Parks Statute applies "not just to those weapons prohibited by § 39-17-1302(a)," but also to "other types of weapons." (VII, 877.) It is true that a prior Attorney General interpreted the statute as applying to all firearms, including handguns. *See* Tenn. Att'y Gen. Op. 08-26, 2008 WL 474305 (Feb. 12, 2008); Tenn. Att'y Gen. Op. 07-148, 2007 WL 4896937 (Oct. 22, 2007). And the General Assembly relied on those interpretations when it amended the statute to exempt handgun carry permit holders. *See* 2009 Tenn. Pub. Acts, ch. 428, §§ 1, 2. That may suggest "the Legislature agreed with, or at least acquiesced in, the

Attorney General's interpretation of the statute." *Coffee Cnty. Bd. of Educ. v. City of Tullahoma*, 574 S.W.3d 832, 848 (Tenn. 2019). But even if that's true, the statute still applies, at minimum, to the prohibited weapons referenced in the statutory text, which "ha[ve] no common lawful purpose." Tenn. Code Ann. § 39-17-1302(a). That means the statute has "some" constitutional applications, *Rahimi*, 602 U.S. at 693.

2. Offensive Carry. The Guns-in-Parks Statute also incorporates the "intent to go armed" element of the Going Armed Statute. Tenn. Code Ann. § 39-17-1311(a). Because this term of art carries with it the "old soil" of prior judicial interpretations, *Rivkin*, 2001 WL 1077952, at *7, the Guns-in-Parks Statute similarly applies to both "offensive or defensive" carrying of firearms. *Kendall*, 118 Tenn. at 156. For the same reasons discussed above, the Guns-in-Parks Statute constitutionally applies to *offensive* carrying of firearms because there is a strong historical tradition of prohibiting "bearing arms in a way that spreads 'fear' or 'terror' among the people," *Bruen*, 597 U.S. at 50; *supra* at 47-52.

3. Non-permit holders. The Guns-in-Parks Statute has a massive carveout that the trial court never once acknowledged in its analysis: anyone with a handgun carry permit may bring a handgun into a public park or other protected area.[6] Tenn. Code Ann. § 39-17-1311(b)(1)(H)(i); (VII, 877-85.) Under *Bruen*, Tennessee's shall-issue licensing regime is presumptively constitutional. 597 U.S. at 38 n.9. Therefore, the Guns-

[6] There is an exception when the property is being used for athletic or school-related activities. Tenn. Code Ann. § 39-17-1311(b)(1)(H)(ii).

in-Parks Statute constitutionally prohibits *non*-permit holders from carrying handguns in public parks.

Once again, *Bruen* proves the facial validity of Tennessee's law. There, the Supreme Court struck down a "may issue" licensing regime in New York. *Id.* at 14, 69-70. But that was due to the exceptional nature of New York's "proper cause" requirement, which gave vast discretion to licensing officials to deny permits to law-abiding citizens unless the applicant could demonstrate a "special need" to carry a firearm. *Id.* Because there was no historical tradition of similar firearm regulations, the Supreme Court held that New York's may-issue law violated the Second Amendment. *Id.*

Not so for shall-issue regimes like Tennessee's. The Supreme Court said that "nothing in its analysis" called into question the constitutionality of the 43 States' "shall-issue" licensing regimes that "appear to contain only 'narrow, objective, and definite' standards guiding licensing officials." *Id.* at 38 n.9 (quoting *Shuttlesworth v. Birmingham*, 394 U.S. 147, 151 (1969)). Those requirements, which often include a "background check" or "a firearms safety course," merely "ensure that those bearing arms in the jurisdiction are, in fact, law-abiding, responsible citizens." *Id.* Unless a permitting scheme is "put toward abusive ends" through "lengthy wait times in processing license applications or exorbitant fees," *id.*, States with shall-issue regimes, like Tennessee, "may continue" to require licenses. *Id.* at 80 (Kavanaugh, J., concurring).

Although *Bruen's* discussion of shall-issue licensing regimes was "not strictly necessary to the Court's holding," this Court should accept it as "welcome guidance" in "grappling with complex legal questions of first impression an area of law that remains relatively undeveloped." *Md. Shall Issue, Inc. v. Moore*, 116 F.4th 211, 232 (4th Cir. 2024) (cleaned up) (Rushing, J., concurring in the judgment). Contrary to Plaintiffs' argument below, *Bruen's* discussion of this issue "cannot be dismissed as a 'passing' aside on a 'tangential issue' that [courts] are free to ignore." *Id.* Throughout the opinion, *Bruen* "contrasted New York's may-issue law with the shall issue laws in other States as a way to explain the rationale and limits of its holding." *Id.* This Court should therefore "give due weight to this considered and reasoned guidance from the Supreme Court." *Id.* (cleaned up).

Since *Bruen*, multiple courts have held that shall-issue licensing regimes are "presumptively" constitutional. *See, e.g.*, *United States v. Peterson*, --- F.4th ---, 2025 WL 3537261, at *5 (5th Cir. Dec. 9, 2025); *Antonyuk v. James*, 120 F.4th 941, 985 n.32 (2d Cir. 2024); *Md. Shall Issue, Inc.*, 116 F.4th at 216, 227. Some have applied *Bruen's* presumption conclusively, without requiring the government to establish a historical tradition of similar firearm regulations. *Peterson*, 2025 WL 3537261, at *5. Other judges have started with *Bruen's* presumption and then conducted a historical analysis to "confirm" that a shall-issue regime is constitutional. *Md. Shall Issue, Inc.*, 116 F.4th at 232 (Rushing, J., concurring in the judgment). Either way, there is an emerging consensus that shall-issue licensing regimes are facially valid.

To the extent *Bruen* requires an independent historical analysis of shall-issue licensing regimes, history confirms that Tennessee's shall-issue regime is constitutional.

First, modern scholarship shows that "weapons licensing was ubiquitous in America, dating to its earliest days, through its application as a widespread regulatory policy tool." Robert J. Spitzer, *Historical Firearm Licensing and Permitting Laws*, 129 Dick. L. Rev. 1041, 1044, 1068 (2025) (surveying nearly 320 licensing laws between the 1600s and early 1900s); *see also* (V, 602-35, 657). The earliest laws "licensed the commercial sale, transport, or firing of weapons," as well as "the possession, handling, or transport of gunpowder." Spitzer, *Historical Firearm Licensing and Permitting Laws*,129 Dick. L. Rev. at 1051. Later, States required licenses for concealed carry. *Id.* at 1052 (identifying 89 concealed weapons carry license laws in 34 States between the Civil War and the early 1900s). Not one court held any of these laws unconstitutional. (V, 659.) So, this Court may consider them as historical analogs to Tennessee law. *Bruen*, 597 U.S. at 34-36.

Second, shall-issue licensing regimes are analogous to surety laws, which "restrict[ed] certain persons' ability to possess and publicly carry weapons because of the danger they posed." *Md. Shall Issue, Inc.*, 116 F.4th at 232 (Rushing, J., concurring in the judgment) (compiling cases); *see also* (VII, 655-57). "By requiring applicants 'to undergo a background check or pass a firearms safety course,' shall-issue licensing laws," like surety laws, "are designed to ensure only that those bearing arms in the

jurisdiction are, in fact, 'law-abiding, responsible citizens.'" *Id.* (quoting *Bruen*, 597 U.S. at 38 n.9).

Thus, the Guns-in-Parks Statute constitutionally restricts the carrying of handguns by *non*-permit holders in public parks. Tenn. Code Ann. § 39-17-1311(b)(1)(H)(i). This clear application of the statute is yet another reason to reject Plaintiffs' facial challenge. *Rahimi*, 602 U.S. at 693.

4. Sensitive places. The Guns-in-Parks Statute also constitutionally restricts the carry of firearms in sensitive places, like public parks, public spaces used for elections, and recreational areas used by children. The trial court misapplied the sensitive places doctrine by ignoring relevant post-ratification history and applying the wrong level of generality in analogizing new sensitive places to those that existed at the time of the Founding.

Public parks. The Guns-in-Parks Statute restricts the carrying of firearms "in or on the grounds of any public park," among other protected areas. Tenn. Code Ann. § 39-17-1311(a). This locational restriction comports with this Nation's historical tradition of limiting firearm carriage in "sensitive places." *Bruen*, 597 U.S. at 30.

The U.S. Supreme Court has recognized a "longstanding" historical tradition of prohibiting firearms in "sensitive places." *Id.* (citing *Heller*, 554 U.S. at 626-27). Indeed, the sensitive-places doctrine originated in England centuries ago. (V, 639.) It traveled across the Atlantic to the American Colonies, resulting in "'sensitive place' firearm restrictions"

that date as far back as the mid-seventeenth century. (V, 640 (citing *Bruen*, 597 U.S. at 30-31).)

Specifically, the U.S. Supreme Court has identified "schools and government buildings" as sensitive places. *Heller*, 554 U.S. at 626-27. It has also found a historical tradition of prohibiting firearms in "legislative assemblies, polling places, and courthouses." *Bruen*, 597 U.S. at 30. Given this history, and the lack of any "disputes regarding the lawfulness of such prohibitions," it is "settled that these locations were 'sensitive places' where arms carrying could be prohibited consistent with the Second Amendment." *Id.*

Sensitive-place laws, like any other firearm regulation, need not be "identical to ones that could be found in 1791." *Rahimi*, 602 U.S. at 691. Courts may reason by analogy "to determine [whether] modern regulations prohibiting the carry of firearms in *new* and analogous sensitive places are constitutionally permissible." *Bruen*, 597 U.S. at 30. The new law "must comport with the *principles* underlying the Second Amendment, but it need not be a 'dead ringer' or a 'historical twin.'" *Rahimi*, 602 U.S. at 692 (emphasis added).

Because the Second Amendment was incorporated against the States in 1868 when the Fourteenth Amendment was ratified, "there is an ongoing scholarly debate on whether courts should primarily rely on the prevailing understanding of an individual right when the Fourteenth Amendment was ratified in 1868 when defining its scope (as well as the scope of the right against the Federal Government)." *Bruen*, 597 U.S. at 37. Although the Supreme Court has not resolved that question, *see*

Rahimi, 602 U.S. at 692 n.1, courts have repeatedly relied on Reconstruction-era history in upholding State laws governing firearms in sensitive places, particularly public parks. *See, e.g.*, *Wolford*, 116 F.4th at 983; *Antonyuk*, 120 F.4th at 1020.

In *Wolford*, for example, the Ninth Circuit upheld the facial validity of California's and Hawaii's sensitive place laws based, in large part, on Reconstruction-era history—a holding the U.S. Supreme Court recently declined to review. 116 F.4th at 983. Consistent with the record in this case, *see supra* at 21-22, the *Wolford* court found that, "as soon as green spaces began to take the shape of a modern park, in the middle of the 19th century, municipalities and other governments imposed bans on carrying firearms into the parks." 116 F.4th at 982 (compiling sources). Although "many of the laws cited . . . were implemented in the years immediately following the ratification of the Fourteenth Amendment," the court "conclude[d] that those postbellum laws carry meaningful evidentiary weight." *Id.* at 983. "The ordinances were fully consistent with pre-ratification practice, they emerged shortly following ratification, and Plaintiffs have not offered any evidence that anyone anywhere viewed the laws as unconstitutional or even questionably constitutional." *Id.* Accordingly, the court held that "the Nation's historical tradition includes regulating firearms in parks." *Id.*

The Court should reach the same conclusion here. Before and immediately after the ratification of the Tennessee Constitution of 1870, and the ratification of the Fourteenth Amendment in 1868, local governments universally prohibited firearms at public parks. *See supra*

at 21-22. Not one court held those regulations unconstitutional. *Antonyuk*, 120 F.4th at 1022. That widespread and unchallenged practice confirms that public parks are sensitive places where legislatures may constitutionally restrict the carrying of firearms.

The trial court properly recognized that "[t]he regulation of sensitive places has already been determined by the Supreme Court of the United States to be within our country's historical tradition." (VII, 880.) But instead of considering "whether parks were understood to be a location where firearms were regulated in 1791 (or in 1868)," it focused on whether public parks are "sufficiently like a school, legislative assembly, polling place or courthouse." (VII, 880.) In other words, it mistakenly treated *Heller's* and *Bruen's* list of sensitive places as *exclusive* and foreclosed the possibility that other sensitive places have always existed—either in 1791 or in 1868.

Neither *Heller* nor *Bruen* purported to identify an exclusive list of sensitive places where firearms may be prohibited consistent with the constitution. *Heller* listed "laws forbidding the carrying of firearms in sensitive places *such as* school and government buildings." 554 U.S. at 626 (emphasis added). *Bruen* added three others: "legislative assemblies, polling places, and courthouses." 597 U.S. at 30. Although *Bruen* commented that "the historical record yields relatively few 18th- and 19th-century 'sensitive places' where weapons were altogether prohibited," *id.*, it did not purport to conduct an exhaustive historical survey. And of course, *Bruen* was primarily concerned with New York's

statewide licensing regime, not targeted locational restrictions at public parks.

The Guns-in-Parks Statute constitutionally applies to public parks because they have been universally treated as sensitive places where firearms could be prohibited since their creation in the mid-nineteenth century. Plaintiffs cannot show the statute is invalid in *all* its applications. *Rahimi*, 602 U.S. at 693.

Polling centers. In addition to parks, the Guns-in-Parks Statute constitutionally applies to the carrying of firearms in civic centers and governmental property used for recreational purposes. Tenn. Code Ann. § 39-17-1311(a). All three locations are used for polling in Tennessee. (IV, 537-38.)

Polling places are sensitive places where States may restrict the carrying of firearms. *Bruen* 597 U.S. at 30; (V, 648-50). At least as far back as 1869, the General Assembly has prohibited Tennesseans from carrying firearms when participating in an election. (V, 640 (citing Public Statutes of the State of Tennessee Since the Year 1858, at 108 (James H. Shankland ed., 1871)).) County websites across the State show that dozens of state and local parks, civic centers, and other types of recreational governmental facilities serve as polling places during elections. (IV, 537-39.) Because Tennessee may restrict carrying firearms in locations that serve as polling places, Plaintiffs cannot "establish that no set of circumstances exists under which the [law] would be valid." *Rahimi*, 602 U.S. at 693.

Recreational Areas for Children. The Guns-in-Parks Statute also builds on a long and important historical tradition of regulating the

carrying of firearms in areas where children play and learn. While there is certainly room for policy disagreement about what laws best advance the cause of public safety in this regard, that debate has no bearing on the constitutional requirement. Courts have repeatedly recognized legislative authority to limit carriage of firearms in child-centric locations. Thus, yet again, Plaintiffs cannot "establish that no set of circumstances exists under which the [law] would be valid." *Id.*

Children are one of the most important factors to consider when assessing whether an area is a sensitive space. *Antonyuk*, 120 F.4th at 1010 (emphasizing the "Nation's tradition of firearm regulation in locations where vulnerable populations are present"). At least three different times when the topic of sensitive places has come before the U.S. Supreme Court, it has doubled down on the fact that "schools" are sensitive places. *See Bruen*, 597 U.S. at 30; *McDonald, Ill.*, 561 U.S. at 786; *Heller*, 554 U.S. at 626; *see also Columbia Hous. & Redevelopment Corp. v. Braden*, 663 S.W.3d 561, 563-567 (Tenn. Ct. App. 2022).

Naturally, courts have extended this protection and deemed places where children are expected to be present as sensitive places analogous to schools. Those locations include:

- Parks, particularly when used for summer camps, *LaFave v. County of Fairfax, Virginia*, No. 1:23-cv-1605, 2024 WL 3928883, at *12-13 (E.D. Va. Aug. 23, 2004);
- Daycares, *Mintz v. Chiumento*, 724 F. Supp. 3d 40, 64 (N.D.N.Y. 2024);
- Playgrounds, *id.*;

- Community centers, *id.*; and
- Zoos, *Antonyuk*, 120 F.4th at 1026.

The Guns-in-Parks Statute protects numerous areas where children are expected to be present. Tens of thousands of children participate in programs and camps hosted in Tennessee parks throughout the year. (IV, 539.) And Tennessee governmental recreational areas and community centers offer many athletic and educational activities for children, much like activities offered at schools. (IV, 539.) In these many applications, the parks, community centers, and recreational areas in the Guns-in-Parks Statute are analogous to schools and are, thus, sensitive spaces.

Resisting this conclusion, the trial court snubbed Supreme Court precedent, noting "the apparent lack of historical support for *Heller's* designation of 'schools' as sensitive places where arms carrying may be banned." (VII, 881 (citation omitted).) Charting its own path, the trial court theorized that school firearm bans "did not stem from schools being a sensitive location, but rather the school acting *in loco parentis* for the students, thus having the authority to regulate the students' possession of firearms." (VII, 882.) To support this conclusion, the court cobbled together a law review article and a dissenting opinion in a federal circuit court case that did not even concern a sensitive-place restriction. (VII, 882.)

Respectfully, it was not the trial court's role to question Supreme Court precedent; "lower courts are bound by the decisions of higher courts." *Barger v. Brock*, 535 S.W.2d 337, 341 (Tenn. 1976). And that's

true even for "old and crumbling high-court precedent—until the high court itself changes direction." Bryan A. Garner, The Law of Judicial Precedent 29 (2016); *see also Khan v. State Oil Co.*, 93 F.3d 1358, 1363-64 (7th Cir. 1996) (adhering to Supreme Court precedent despite its "increasingly wobbly, moth-eaten foundation" because the precedent had not been expressly overruled).

Heller identified schools as sensitive places where firearms may be prohibited, and until the Supreme Court revisits that conclusion or the Tennessee Supreme Court decouples our state right to bear arms from the Second Amendment, Tennessee courts are bound by it. The trial court, like so many others have, should have made the clear connection between prohibiting firearms in schools and restricting firearm possession in recreational areas where children play and learn—including parks, playgrounds, and civic centers. *See Antonyuk*, 120 F.4th at 1026; *Wolford*, 116 F.4th at 984-85; *LaFave*, 2024 WL 3928883, at *13; *Mintz*, 724 F. Supp. 3d at 64-65.

Finally, the Guns-in-Parks Statute survives even under the inapplicable "plainly legitimate sweep" test. Plaintiffs have again failed to carry their "heavy factual burden" of showing that the law's unconstitutional applications substantially outweigh its plainly legitimate sweep. *Bonta*, 152 F.4th at 1002, 1020. And one need not speculate. The Guns-in-Parks Statute has been in effect for decades and Plaintiffs do not even attempt to identify or quantify its unconstitutional applications or explain how those unconstitutional applications substantially outnumber other, constitutional applications of the statute over the last 40 or so years of its enforcement.

* * *

Like the Going Armed Statute, the Guns-in-Parks Statute is long overdue for a legislative tune-up. But the parks statute likewise retains a constitutional core: it constitutionally prohibits carrying firearms offensively, especially as applied to weapons prohibited by § 39-17-1302(a), which have no common lawful purpose. The statute also constitutionally prohibits non-permit holders from carrying handguns into public parks and other sensitive places. Given these constitutional applications, the trial court erred by declaring the Guns-in-Parks Statute *facially* invalid.

III. The Chancery Court Erred by Granting Declaratory Relief to Non-Parties.

If Plaintiffs are entitled to any relief—and they are not—the declaratory judgment must be limited to the parties. In ruling that it would "not limit the scope of the declaratory relief," (VII, 885-86), the chancery court violated longstanding limitations on a court of equity's powers.

A. Plaintiffs' remedy must be tailored to their injury.

A valid remedy "ordinarily 'operate[s] with respect to specific parties,'" not on "legal rules in the abstract." *California v. Texas*, 593 U.S. 659, 672 (2021) (quoting *Murphy v. Nat'l Collegiate Athletic Ass'n*, 584 U.S. 453, 489 (2018) (Thomas, J., concurring)). And any remedy "must be tailored to redress the plaintiff's particular injury." *Gill v. Whitford*, 585 U.S. 48, 73 (2018); *L. W. v. Skrmetti,* 83 F.4th 460, 490 (6th Cir. 2023)*, aff'd sub nom. United States v. Skrmetti*, 605 U.S. 495 (2025). This "general rule that remedies should be tailored to the injury suffered

from" applies when the alleged injury results from a "constitutional violation." *Harris v. State*, 875 S.W.2d 662, 666 (Tenn. 1994). It applies in challenges to a "facially unlawful" governmental action. *Trump v. CASA, Inc.*, 606 U.S. 831, 851, 855 (2025). And it applies equally to requests for injunctive and declaratory relief. *Id.* at 844 (citing *Doran v. Salem Inn, Inc.*, 422 U.S. 922, 931 (1975)).

Recently, the Supreme Court reaffirmed and expanded on this general rule. *Id.* Under the Federal Judiciary Act, federal courts may only issue the "equitable remedies 'traditionally accorded by courts of equity' at our country's inception." *Id.* at 841 (citation omitted). Historically, these remedies included "[n]either the universal injunction nor any analogous form of relief." *Id.* at 842. Put differently, at common law, courts of equity could not issue relief that would "bind one who was not a 'party to the cause.'" *Id.* at 842 (citation omitted). This held true of federal courts from the Founding until the 21st century when courts began issuing errant universal injunctions. *Id.* at 843-46. Thus, because "universal relief" is unsupported by common law or the Federal Judiciary Act, federal courts lack authority to grant this relief. *Id.* at 861.

Like federal courts, Tennessee courts of equity are limited to the powers "incident to a court of equity" at our nation's founding. *Supra* at 29 (citing Tenn. Code Ann. § 16-11-101). Because courts of equity lacked authority to issue universal relief, Tennessee courts also lack this authority.

This general rule also preserves the separation of powers: "When a court concludes that the Executive Branch has acted unlawfully, the

answer is not for the court to exceed its power, too." *CASA*, 606 U.S. at 861. And it harmonizes with other protections of governmental discretion to enforce challenged laws against non-parties. *See United States v. Mendoza*, 464 U.S. 154, 158-63 (1984) (holding that "nonmutual offensive collateral estoppel simply does not apply against the government").

The trial court, in declaring the challenged statutes "are invalid statewide," stated it had difficulty envisioning the "purpose to a [facial] declaratory invalidation of statutory text . . . that is nonetheless limited in effect to only a handful of citizens." (VII, 886.) And, without citation to authority, the court stated that it could "discern no basis for allowing the continued application of the challenged statutes against other Tennesseans." (*Id.*)

But relief in facial constitutional challenges must operate in "a party-specific and injury-focused manner" like in any other case. *L.W.*, 83 F.4th at 470, 490. The Supreme Court recently reaffirmed this. *CASA*, 606 U.S. at 855. And district courts have followed suit. *See, e.g.*, *Benjamin v. Oliver*, No. 1:25-CV-04470-VMC, 2025 WL 2542072, at *21 n.12 (N.D. Ga. Sept. 4, 2025) (noting that "after *CASA*, the relief a court can grant a plaintiff mounting a facial" challenge is limited to "an injunction against enforcing the law against the plaintiff or plaintiffs only"); *see also Nat'l Educ. Ass'n-New Hampshire v. NH Att'y Gen.*, No. 25-CV-293-LM, 2025 WL 2807652, at *26-27 (D.N.H. Oct. 2, 2025).

Thus, the chancery court erred by ignoring the general rule limiting relief to the parties and issuing an order encompassing all seven million plus residents of Tennessee.

B. The Declaratory Judgment Act limits relief to the parties.

The trial court's declaration also extended beyond the text of the Declaratory Judgment Act, which is littered with references to particular parties. For example, a "person . . . whose rights . . . are affected" may seek a declaration. Tenn. Code Ann. § 29-14-103. The Act also demands that those who desire relief be named plaintiffs: "all persons shall be made parties who have or claim any interest which would be affected by the declaration." *Id.* § -107. And it demands that all those from whom relief is sought be made defendants: "no declaration shall prejudice the rights of persons not parties to the proceedings." *Id.*

"Because of the nature of declaratory relief, . . . it is incumbent that every person having an affected interest be given notice and an opportunity to be heard." *Huntsville Utility Dist. of Scott Cnt'y, Tenn. v. General Trust Co.*, 839 S.W.2d 397, 403 (Tenn. Ct. App. 1992). This is a "stricter requirement[]" than the joinder rules. *Id.* Persons not made a party to a declaratory judgment action "would not be bound by the courts' decision." *Id.* Failure to join parties interested in the declaration sought "is fatal." *Wright v. Nashville Gas & Heating Co.*, 194 S.W.2d 459, 598 (Tenn. 1946).

In rejecting these arguments, the chancery court stated, without citation to authority, that (1) the Declaratory Judgment Act only prohibits declarations that prejudice non-parties, and (2) non-parties

would not be prejudiced by its ruling. (VII, 886.) It is wrong on both scores.

1. In discussing how the Act bars declarations that prejudice the rights of non-parties, the chancery court did not address how the Act *also* requires that "all persons who have or claim any interest which would be affected by the declaration" be made parties. Tenn. Code Ann. § 29-14-107(a). This is not an impossible task. There is a ready mechanism by which this can be accomplished. To ensure all Tennesseans benefit from a facial declaration, the Plaintiffs could have brought a class action lawsuit. Tenn. R. Civ. P. 23; *see CASA*, 606 U.S. at 849-50. Plaintiffs, as the "masters of their complaint," chose not to do so. *Mullins v. State*, 294 S.W.3d 529, 540 (Tenn. 2009). The relief they receive should be limited accordingly.

2. Non-parties will be prejudiced by the chancery court's declaration that the challenged statutes are "invalid statewide." (VII, 885-86.) Though only a few State officials were defendants, the chancery left "[n]o government official" untouched by its judgment. (*Id*. at 886.) And the prejudicial effect of this ruling is not limited to state officials. When a court prevents a state from "effectuating statutes enacted by representatives of its people," the State itself "suffers a form of irreparable injury." *CASA*, 606 U.S. at 861 (citation omitted).

* * *

The trial court compounded its previous errors on jurisdiction and the merits by granting universal declaratory relief to non-parties. If this Court reaches the remedy issue, it should appropriately limit the scope of relief to the parties.

CONCLUSION

This Court should reverse the chancery court's order granting summary judgment to Plaintiffs. Because the chancery court lacked jurisdiction, the Court should remand for entry of an order of dismissal. Alternatively, the Court should remand for entry of an order granting summary judgment to Defendants.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

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