IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
28th JUDICIAL DISTRICT
GIBSON COUNTY

STEPHEN L. HUGHES,
DUNCAN O'MARA,
ELAINE KEHEL,
GUN OWNERS OF AMERICA, INC. and
GUN OWNERS FOUNDATION

Plaintiffs,

v.

BILL LEE, in his official capacity as the Governor for the State of Tennessee, and JONATHAN SKRMETTI, in his official capacity as the Attorney General for the State of Tennessee

Defendants.

Civil No: 24475

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

INTRODUCTION

Plaintiffs Stephen L. Hughes, Duncan O'Mara, Elaine Kehel, Gun Owners of America, Inc., and Gun Owners Foundation bring this suit for declaratory and injunctive relief under Tennessee Code Annotated § 29-14-102, Tennessee Code Annotated § 1-3-121, and any other applicable provision or doctrine of law. The Individual Plaintiffs are residents of the State of Tennessee who desire to possess or carry a firearm with the intent of being armed, and desire to do so in ordinary places such as public parks and other public recreational venues. However, if they do so, they are subject to stops by law enforcement and criminal prosecution by the State, pursuant to the provisions of Tennessee Code Annotated § 39-17-1307 and/or § 39-17-1311. Plaintiffs contend that Tennessee's statutory scheme places them at risk of serious criminal charges if they engage in constitutionally protected activity and, with respect to the limited

exceptions provided in the statute, burdens them to prove or assert that they have a statutory defense or exception when facing a criminal charge. Plaintiffs contend that the challenged statutory prohibitions on possessing firearms in public places violate their right to possess arms as protected by Article I, Section 26 of the Tennessee Constitution. Plaintiffs further seek a preliminary injunction, halting enforcement and further implementation of these unconstitutional statutes, until a decision on the merits can be reached.

THE PARTIES

1. Plaintiff Stephen L. Hughes is a natural person and a citizen of the United States and the State of Tennessee, who is a legal possessor of at least one firearm and who currently possesses a Tennessee "enhanced" handgun carry permit. He resides in Gibson County, Tennessee. He has no disqualification under any state or federal law which would prohibit him from possessing a firearm, and is a member of Gun Owners of America

2. Plaintiff Duncan O'Mara is a natural person and a citizen of the United States and the State of Tennessee, who is a legal possessor of at least one firearm and who currently possesses a Tennessee "enhanced" handgun carry permit. He resides in Crockett County, Tennessee. He has no disqualification under any state or federal law which would prohibit him from possessing a firearm, and is a member of Gun Owners of America.

3. Plaintiff Elaine Kehel is a natural person and a citizen of the United States and the State of Tennessee, who is a legal possessor of at least one firearm and who currently does not possess a Tennessee "enhanced" handgun carry permit or a Tennessee "concealed" handgun carry permit. She resides in Gibson County, Tennessee. She is qualified and able to carry a handgun in Tennessee in public pursuant to Tennessee Code Annotated § 39-17-1307(g) (the

"2021 Permitless Carry Law"). She has no disqualification under any state or federal law which would prohibit her from possessing a firearm, and is a member of Gun Owners of America.

4. Plaintiff Gun Owners of America, Inc. ("GOA") is a California non-stock corporation with its principal place of business in Springfield, Virginia. GOA is organized and operated as a non-profit membership organization that is exempt from federal income taxes under Section 501(c)(4) of the U.S. Internal Revenue Code. GOA was formed in 1976 to preserve and defend the Second Amendment rights of gun owners. GOA has more than 2 million members and supporters across the country, including many who reside throughout the State of Tennessee and in Gibson County, Tennessee.

5. Plaintiff Gun Owners Foundation ("GOF") is a Virginia not-for-profit, non-stock corporation with its principal place of business in Springfield, Virginia. GOF is organized and operated as a non-profit legal defense and educational foundation that is exempt from federal income taxes under Section 501(c)(3) of the U.S. Internal Revenue Code. GOF is supported by gun owners across the country, including within the State of Tennessee.

6. GOA and GOF bring this action in a representational capacity on behalf of, and asserting the interests of, their members and supporters in Tennessee. For example, GOA has many thousands of members and supporters across the State of Tennessee, including within Gibson County, many of whom are being irreparably harmed by the challenged provisions. Each of these persons would have standing to challenge Tennessee Code Annotated § 39-17-1311 in their own right. Protection of these members' and supporters' rights and interests is germane to the mission of GOA and GOF, which is to preserve and protect the rights of Americans to keep and bear arms, including against infringement by anti-gun politicians and unconstitutional state statutes. Litigation of the challenges raised in this case does not require

participation of each of GOA and GOF's members and supporters. GOA and GOF are fully and faithfully representing the interests of their members and supporters without participation by each of these individuals. Indeed, GOA and GOF routinely litigate cases on behalf of their members and supporters across the nation.

7. Many of the gun owners represented in this matter by GOA and GOF, like the Individual Plaintiffs, wish to possess and carry firearms in the areas made entirely off-limits (or subject to vague "defenses" and "exceptions") by Tennessee Code Annotated § 39-17-1311(a), including those members and supporters who are eligible to carry handguns without permits and those individuals between the ages of 18–21 who are ineligible to carry handguns without permits.

8. Bill Lee is the Governor of Tennessee and is sued in his official capacity as the official representative of the State of Tennessee. The Governor is a proper party to a declaratory judgment action seeking to invalidate and/or enjoin the application of a criminal statute to a citizen.

9. Jonathan Skrmetti is the Attorney General for the State of Tennessee and is sued in his official capacity. The Attorney General is a proper party to a declaratory judgment action seeking to invalidate and/or enjoin the application of a criminal statute to a citizen. *See* Tennessee Code Annotated § 29-14-107.

JURISDICTION AND VENUE

10. This Court has subject matter jurisdiction over this action pursuant to Tennessee Code Annotated §§ 16-11-101 and 16-11-102 and Tennessee Code Annotated § 29-14-102.

11. Venue lies in this Court pursuant to Tennessee Code Annotated § 20-4-104 because the Individual Plaintiffs are all residents of the 28th Judicial District and the circumstances giving to these claims arose in this judicial district.

STATEMENT OF FACTS

12. The Individual Plaintiffs each desire to be able to carry a firearm in a public park or other area enumerated in Tennessee Code Annotated § 39-17-1311(a). See Affidavits of Stephen L. Hughes, Duncan O'Mara and Elaine Kehel filed herewith. However, each of them is unable to do so without risk of being stopped and/or detained by law enforcement and potentially charged with a criminal offense because of the prohibitions contained in Tennessee Code Annotated § 39-17-1311(a). For some of these prohibited categories of locations, § 39-17-1311(b)(H) and (I) provide a limited affirmative defense to a criminal charge. Others of these prohibited categories of locations are entirely off-limits to the possession of firearms, irrespective of whether a person has a permit to carry.

13. Like the Individual Plaintiffs, GOA and GOF's members and supporters desire to carry firearms in a public park or other area(s) enumerated in Tennessee Code Annotated § 39-17-1311(a). As set forth more fully below, Tennessee Code Annotated § 39-17-1311(a) defines as an offense, and potentially a felony offense, an individual carrying certain weapons in certain areas. Further, Tennessee's statutes place the risk and burden of defending against any such criminal charges on the Individual Plaintiffs and GOA and GOF's members and supporters as individuals. *See* Tennessee Code Annotated § 39-17-1308.

14. As a result of the existence of the offense set forth in Tennessee Code Annotated § 39-17-1311(a), the Individual Plaintiffs and the members and supporters of GOA and GOF, respectively, are forced to disarm themselves before going into the places enumerated in that

section, in order to attempt to avoid any risk of being stopped, questioned, detained, and/or charged by the State and even subjected to a criminal prosecution and trial for a potential violation of that section. As a result of the challenged provisions, Plaintiffs' constitutional rights are infringed, and their personal safety and security is endangered.

15. Plaintiffs, respectively, would carry a firearm in the places enumerated in Tennessee Code Annotated § 39-17-1311(a) for lawful purposes, including self-defense and defense of third parties in their accompaniment, but for the existence of the criminal offenses set forth in that statute.

Tennessee Statutes

16. Tennessee Code Annotated § 39-17-1311(a) generally prohibits certain weapons, possessed "with the intent to go armed," 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." The weapons subject to this general prohibition are enumerated in Tennessee Code Annotated § 39-17-1302(a) ("Prohibited Weapon(s)").

17. Prohibited Weapons include machine guns, explosives, and other weapons that allegedly "ha[ve] no common lawful purpose." Tennessee Code Annotated § 39-17-1302(a).

18. Interestingly enough, a handgun is not an enumerated Prohibited Weapon. *See* Tennessee Code Annotated § 39-17-1302(a); § 39-11-106(a)(19) (defining "handgun"). Neither is a rifle. *See* Tennessee Code Annotated § 39-17-1302(a); § 39-17-1301(13) (defining "rifle"). Neither is a shotgun. *See* Tennessee Code Annotated § 39-17-1302(a); § 39-17-1301(15) (defining "shotgun").

19. In fact, firearms in general — provided they are not machine guns under Tennessee law — are *not* enumerated Prohibited Weapons. *See* Tennessee Code Annotated § 39-17-1302(a); § 39-11-106(a)(13) (defining "firearm"); § 39-17-1301(10) (defining "machine gun"). One thus might conclude that, at first blush, Section 39-17-1311(a) does not apply to the carry of firearms. But one would be wrong.

20. First, after establishing the general prohibition against possessing or carrying Prohibited Weapons on public recreational properties, Subsection (b) of Section 39-17-1311 provides a list of exceptions to which "Subsection (a) shall not apply." Notable among these exceptions are carveouts for persons carrying handguns with "enhanced" or "concealed" handgun carry permits and others who "strictly conform[]" their behavior to enumerated scenarios. Tennessee Code Annotated § 39-17-1311(b)(1)(H), (I), and (J). In fact, Subsection (b)(2) of the statute warns that "[a]t any time the person's behavior no longer strictly conforms to one (1) of the classifications in Subsection (b)(1), the person shall be subject to subsection (a)." In that sense, Subsection (b) exempts conduct that Subsection (a) does not criminalize.

21. Indeed, even if a person carrying a handgun, rifle, shotgun, or indeed any common firearm did *not* conform their behavior to an exception under Subsection (b), Subsection (a) still criminalizes only enumerated *Prohibited Weapons*, which does not include handguns, rifles, shotguns, or other common firearms.

22. Notwithstanding the vagueness and ambiguity of the statute, the Tennessee Attorney General has opined that Tennessee Code Annotated § 39-17-1311 actually prohibits — in addition to the Prohibited Weapons exclusively listed — the "possession of *other types of weapons* on recreational property owned or operated by state, county, or municipal governments

at any time the person's conduct does not strictly conform to the requirements of [Subsection (b)]." Tennessee Attorney General Opinion 18-04 (January 31, 2018) (emphasis added).

23. Under this interpretation of the law, rifles and shotguns are prohibited even within the otherwise exempted "public park, natural area, historic park, nature trail, campground, forest, greenway, waterway, or other similar public place that is owned or operated by the state, a county, a municipality, or instrumentality of the state, a county, or municipality," regardless of whether a person holds an "enhanced" or "concealed" handgun carry permit. Tennessee Attorney General Opinion 18-04 (January 31, 2018) (interpreting Tennessee Code Annotated § 39-17-1311(b)(1)(H)(i) in this manner because "[t]he statute is silent regarding the possession of rifles or shotguns in those places"). Likewise, according to the Attorney General's opinion, handguns are also prohibited "on recreational property owned or operated by state, county, or municipal governments at any time the person's conduct does not strictly conform" to the handgun-permit exceptions. *See id.*

24. Tennessee law creates limited exceptions to the offense set forth in Tennessee Code Annotated § 39-17-1311(a). For example, Section 39-17-1311(b)(1)(H)(i) creates a limited exception only for individuals who are "authorized to carry the handgun pursuant to § 39-17-1351 or § 39-17-1366" but then only if two additional qualifiers are satisfied.

25. The first qualifier in Tennessee Code Annotated § 39-17-1311(b)(1)(H) provides that the offense in Subsection (a) "shall not apply" to "persons possessing a handgun, who are authorized to carry the handgun pursuant to § 39-17-1351 or § 39-17-1366, while within or on a public park, natural area, historic park, nature trail, campground, forest, greenway, waterway, or other similar public place that is owned or operated by the state, a county, a municipality, or instrumentality of the state, a county, or municipality." Tennessee Code Annotated § 39-17-

1311(b)(1)(H)(i). The list of places covered by the defense and/or exception for permit holders is more limited than the list of prohibited locations found in Subsection (a).

26. Second, the defense and/or exception for permit holders in Section 39-17-1311(b)(1)(H)(i) does not apply if the individual "possessed a handgun in the immediate vicinity of property that was, at the time of possession, in use by any board of education, school, college or university board of trustees, regents, or directors for the administration of any public or private educational institution for the purpose of conducting an athletic event or other school-related activity on an athletic field, permanent or temporary." Tennessee Code Annotated § 39-17-1311(b)(1)(H)(ii).

27. There are no defenses or exceptions available to individuals who carry, with the intent to go armed, firearms other than handguns in places enumerated in Tennessee Code Annotated § 39-17-1311(a) unless the individual does so under the narrow circumstances set forth in Tennessee Code Annotated § 39-17-1311(b)(1)(J) or in the event that Tennessee Code Annotated § 39-17-1322, Tennessee's "safe harbor" statute, might be applicable.

28. There are no defenses or exceptions to the offense set forth in Tennessee Code Annotated § 39-17-1311(a) available to an individual who is carrying a handgun pursuant to Tennessee's 2021 Permitless Carry Law, which is found in Tennessee Code Annotated § 39-17-1307(g), with the exception of the limited exceptions found in Tennessee Code Annotated § 39-17-1311(b)(1)(J) or in the event that Tennessee Code Annotated § 39-17-1322, Tennessee's "safe harbor" statute, might be applicable.

29. Under Tennessee law, when a statute creates a "defense" to an offense, the burden of proof at trial is placed on the accused, the individual, to "raise" the issue at trial by proof. Tennessee Code Annotated § 39-11-203. If, and only if, "admissible evidence is introduced

supporting the defense" does the burden at trial shift to the state to negate the defense "beyond a reasonable doubt." Tennessee Code Annotated § 39-11-201.

30. When a statute creates an "exception" to an offense, the burden of proof at trial is placed on the accused, the individual, to "raise" the issue at trial by proof and the burden remains on the accused to prove the exception "by a preponderance of the evidence." Tennessee Code Annotated § 39-11-202.

31. Consequently, under Tennessee statutes, if an individual possesses a firearm in an area listed in Tennessee Code Annotated § 39-17-1311(a), the individual is at risk of being stopped by a law enforcement officer, detained, questioned, charged, arrested, and/or indicted for the commission of a crime for the alleged violation of Tennessee Code Annotated § 39-17-1311(a).

32. Further, if an individual possesses a firearm in an area listed in Tennessee Code Annotated § 39-17-1311(a), there is no affirmative requirement on the State, any law enforcement officer, any judicial magistrate, any district attorney, and/or any trial judge to consider any statutory "defense" or any statutory "exception" prior to the trial of the matter if the individual is prosecuted.

33. Thus, under these statutes, a person carrying a handgun under one of these "exceptions" or subject to one of these "defenses" can still be arrested and charged with the associated crime under the aforementioned statutes. The Plaintiffs reasonably fear arrest, prosecution, and/or conviction for behavior that is constitutionally protected.

34. Further, Plaintiff Kehel is unable to carry any "firearm," including a handgun, "the quintessential self-defense weapon" (*N.Y. State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111, 2143 (2022) (quoting *District of Columbia v. Heller*, 554 U.S. 570, 629 (2008))), in the

places enumerated in Tennessee Code Annotated § 39-17-1311(a), as no "defense" or "exception" applies to her since she does not have a handgun permit. But for these challenged laws, all Plaintiffs would have the option and could carry (firearms, including handguns) in the places enumerated in Section 39-17-1311(a) but they fear arrest and prosecution for engaging in that protected activity.

35. Under Tennessee law, if a person is subject to prosecution under Tennessee Code Annotated § 39-17-1311(a), they are also potentially subject to prosecution under Tennessee Code Annotated § 39-17-1307(a).

Tennessee Constitution, Article I Section 26

36. The Second Amendment to the United States Constitution provides: "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."

37. Article I, Section 26 of the Tennessee Constitution provides: "That the citizens of this State have a 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." This provision was added to the Tennessee Constitution in 1870.

38. The Second Amendment to the United States Constitution and Article I, Section 26 of the Tennessee Constitution protect coextensive rights possessed by Tennesseans, making interpretations of the Second Amendment (and federal case law) persuasive to the interpretation of Article I, Section 26.

39. As Tennessee courts have used "major cases in state and federal jurisprudence concerning the right to keep and bear arms" in interpreting the right, *Embody v. Cooper*, No. M2012-01830-COA-R3-CV, 2013 Tenn. App. LEXIS 343, at *8 (Ct. App. May 22, 2013), this

Complaint addresses authorities under the Second Amendment, although — for avoidance of confusion — Plaintiffs do not bring a challenge under the Second Amendment and seek relief solely for a violation of Article I, Section 26 of the Tennessee State Constitution. *See also Andrews v. State*, 50 Tenn. 165, 177 (1871) ("We may well look at any other clause of the same Constitution, or of the Constitution of the United States, that will serve to throw any light on the meaning of this clause."); *Michigan v. Long*, 463 U.S. 1032, 1041 (1983).

40. Tennessee's Constitution cannot afford its citizens fewer protections with regard to the right to keep and bear arms than the United States' Constitution. *McDonald v. City of Chicago*, 561 U.S. 742 (2010); *see Stickley v. City of Winchester*, 2022 Va. Cir. LEXIS 201, at *35 (Winchester Cir. Ct. Sept. 27, 2022) ("[T]he Fourteenth Amendment incorporates the Second Amendment to the States. Therefore, Article I, Section 13, of the Constitution of Virginia is, at the very least, co-extensive with the Second Amendment as to the enumerated rights guaranteed by the Second Amendment. As a result, it is appropriate for this Court to examine Second Amendment jurisprudence to determine whether the [challenged] provisions . . . violate Article I, Section 13.").

41. Since the operative provision of the Tennessee Constitution was ratified after the ratification of the Second Amendment, it would make absolutely no sense for Tennesseans to knowingly ratify a state provision that protected less than the Second Amendment and, therefore, would immediately become inoperative and ineffective. For that reason, as well, Article I, Section 26 must be read to provide *at least* the same level of protection as the Second Amendment, thus making federal authorities persuasive and relevant to an Article I, Section 26 analysis.

42. In its landmark 2008 decision in *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court rejected the nearly uniform opinions reached by the courts of appeals, which for years had claimed that the Second Amendment protects only a communal right of a state to maintain an organized militia. *Id.* at 581. Setting the record straight, the *Heller* Court explained that the Second Amendment recognizes, enumerates, and guarantees to individuals the preexisting right to keep and carry arms for self-defense and defense of others in the event of a violent confrontation. *Id.* at 592.

43. In *McDonald v. City of Chicago*, 561 U.S. 742 (2010), the Supreme Court explained that the Second Amendment is fully applicable to the states through operation of the Fourteenth Amendment. *Id.* at 791.

44. As a result of the holding in *McDonald*, the Tennessee Constitution cannot be construed to allow government authority to infringe rights of individuals if such authority would constitute an infringement of the individual's rights under the Second Amendment. *See Andrews v. State*, 50 Tenn. 165, 177 (1871) ("We find that, necessarily, the same rights, and for similar reasons, were being provided for and protected in both the Federal and State Constitutions.").

45. In *Caetano v. Massachusetts*, 577 U.S. 411 (2016), the Supreme Court reaffirmed its respective conclusions in *Heller* and *McDonald* that "the Second Amendment extends, prima facie, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding" and that this "Second Amendment right is fully applicable to the States." *Id.* at 411.

46. In *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111 (2022), the Supreme Court stated that the Second and Fourteenth Amendments together guarantee individuals not only the right to "keep" firearms in their homes, but also the right to "bear arms," meaning the

right to carry constitutionally protected arms "for self-defense outside the home," free from infringement by either federal or state governments. *Id.* at 2122.

47. In addition to recognizing the right of individuals to carry a firearm in public for self-defense, *Bruen* also rejected outright the methodology that had been used in many state and federal courts to judge Second Amendment challenges. *Bruen* at 2117-2118.

48. Prior to *Bruen*, federal and state courts had adopted a two-part test for analyzing Second Amendment cases. *See Bruen*, at 2126, 2127 n.4 (collecting cases using two-part tests).

49. *Bruen* expressly rejected this atextual, "judge empowering" interest-balancing approach, and, referencing *Heller*, again directed the courts to assess the text of the Second Amendment, informed by the historical tradition. *Bruen*, at 2117–18, 2126–30.

50. The *Bruen* Court held that "when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. To justify its regulation, the government may not simply posit that the regulation promotes an important interest. Rather, the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation. Only if a firearm regulation is consistent with this Nation's historical tradition may a court conclude that the individual's conduct falls outside the Second Amendment's 'unqualified command.'" *Bruen* at 2126.

51. In reviewing the historical evidence, *Bruen* limited the relevant history to a narrow time period, because "not all history is created equal," focusing on the period around the ratification of the Second Amendment and perhaps the Fourteenth Amendment (but noted that "post-ratification" interpretations "cannot overcome or alter that text," and "we have generally assumed that the scope of the protection applicable to the Federal Government and States is pegged to the public understanding of the right when the Bill of Rights was adopted in 1791").

Id. at 2137; *see also id.* at 2136–53 (discussing the lack of relevant historical prohibitions on concealed carry in public).

52. Thus, according to the Second Amendment's text, and as applied by the Court in *Bruen*, if a member of "the people" wishes to "keep" or "bear" a protected "arm," then the ability to do so "shall not be infringed." Period. There are no "ifs, ands, or buts," and it does not matter (even a little bit) how important, significant, compelling, or overriding the government's justification for or interest in infringing the right might be. It does not matter whether a government restriction "minimally" versus "severely" burdens (*i.e.*, infringes) the Second Amendment. There are no relevant statistical studies to be consulted. There are no sociological arguments to be considered. The ubiquitous problems of crime or the density of population do not affect the equation. The only appropriate inquiry, according to *Bruen*, is what the "public understanding of the right to keep and bear arms" was during the ratification of the Second Amendment in 1791, and perhaps during ratification of the Fourteenth Amendment in 1868. *Bruen* at 2137–38.

53. Lest there be any doubt, the Supreme Court has also instructed as to the scope of the protected persons, arms, and activities covered by the Second Amendment.

54. First, *Heller* explained that "in all six other provisions of the Constitution that mention 'the people,' the term unambiguously refers to all members of the political community, not an unspecified subset." *Heller*, 554 U.S. at 580. *Heller* cited to *United States v. Verdugo-Urquidez*, 494 U.S. 259, 265 (1990), which held that "'the people' ... refers to a class of persons who are part of a national community or who have otherwise developed sufficient connection with this country to be considered part of that community."

55. Second, *Heller* turned to the "substance of the right: 'to keep and bear Arms.'" *Id.* at 581. The Court explained that "'[k]eep arms' was simply a common way of referring to possessing arms, for militiamen *and everyone else*." *Id.* at 583. Next, the Court instructed that the "natural meaning" of "bear arms" was "wear, bear, or carry ... upon the person or in the clothing or in a pocket, for the purpose ... of being armed and ready for offensive or defensive action in a case of conflict with another person." *Id.* at 584. And "[a]t the time of the founding, as now, to 'bear' meant to 'carry.'" *Id. Bruen* was more explicit, explaining that the "definition of 'bear' naturally encompasses public carry." *Bruen* at 2134.

56. Third, with respect to the term "arms," *Heller* explained that "the Second Amendment extends, prima facie, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding." *Heller* at 582. Indeed, the "arms" protected by the Second Amendment include "'weapons of offence, or armour of defence... '[A]rms' a[re] 'any thing that a man wears for his defence, or takes into his hands, or useth in wrath to cast at or strike another.'" *Heller* at 581 (citation omitted).

57. It is clear that the Plaintiffs here fall within the scope of persons, arms, and activities protected by Article I, Section 26. *See Antonyuk v. Hochul*, No. 1:22-CV-0986 (GTS/CFH), 2022 WL 16744700, 2022 U.S. Dist. LEXIS 201944.

58. Finally, in addition to clearly establishing the framework by which lower courts are to analyze Second Amendment challenges, *Bruen* also provided several additional guideposts.

The Challenged Provisions Violate the Tennessee Constitution, Article I Section 26

59. As is relevant here, *Bruen* explained that states have extremely narrow latitude to limit the places where firearms may be carried in public, mentioning in *dicta* only "sensitive

places such as schools and government buildings," along with "legislative assemblies, polling places, and courthouses." *Id.* at 2133. Although the *Bruen* Court acknowledged that other "*new* and analogous sensitive places" may exist, such potential locations would be highly limited and certainly cannot be defined so broadly as to "include all 'places where people typically congregate'" or, for example, for New York to "effectively declare the island of Manhattan a 'sensitive place.'" *Id.* at 2133–34.

60. Turning large areas of the State into sensitive places where firearms are prohibited, Tennessee Code Annotated § 39-17-1311 stands in direct opposition to that warming and, as such, violates Article I, Section 26.

61. In fact, Tennessee law broadly makes it a crime for *anyone* to carry *any* firearm *anywhere* with the intent to go armed (including for self-defense purposes). Tennessee Code Annotated § 39-17-1307(a). This statute has no geographic limits and would apply to any place, whether owned or controlled publicly or privately (including merely bearing arms within one's own residence for self-defense, see, Tennessee Code Annotated § 39-17-1308(a)(3)(A)).

62. Thus, as written, Tennessee Code Annotated § 39-17-1307(a) makes all places within the state a prohibited place for the carrying of any firearm when possessed by the individual "with the intent to go armed." In other words, Tennessee statutes criminalize the exercise of the right to bear arms.

63. Tennessee law further makes it a crime for an individual "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 [i] public park, [ii] playground, [iii] civic center or [iv] other building facility, area or property owned, used or operated by any municipal, county or state government, or

instrumentality thereof, for recreational purposes." Tennessee Code Annotated § 39-17-1311(a). The statute provides various limited exceptions for a narrow subset of persons (permit holders) in a narrow subset of locations (public parks and certain federal, state, or local recreational facilities). Tennessee Code Annotated § 39-17-1311(b)(H) and (I).

64. To be sure, there are statutory "defenses" or "exceptions" to an offense under Tennessee Code Annotated § 39-17-1307(a), some of which are found elsewhere in Tennessee Code Annotated § 39-17-1307, with others found in Tennessee Code Annotated § 39-17-1308 and § 39-17-1350 (available only to off-duty law enforcement and others identified in that code section).

65. The Article I, Section 26 right to keep and bear arms, however, is not an "exception" or an affirmative "defense" to a criminal charge. Rather, it is a pre-existing right that is recognized and protected from government infringement.

66. Tennessee Code Annotated § 39-17-1311(a) represents an attempt by the State of Tennessee to prohibit a class or classes of weapons in a purported "sensitive place" as that term is used in *Bruen*. Yet there is nothing "sensitive" about any of the locations covered by § 39-17-1311(a). First, none of the types of public locations enumerated in § 39-17-1311(a) is a school, government building where "government business takes place," a legislative assembly, polling place, or courthouse. *See Bruen* at 2133; *Stickley*, 2022 Va. Cir. LEXIS 201, at *50. Nor are they places "where a bad-intentioned armed person could disrupt key functions of democracy." *Hardaway v. Nigrelli*, No. 22-CV-771 (JLS), 2022 WL 16646220, 2022 U.S. Dist. LEXIS 200813, at *34 (W.D.N.Y. Nov. 3, 2022) (emphasis omitted). Nor are the locations enumerated in § 39-17-1311(a) places "where uniform lack of firearms is generally a condition of entry, and where government officials are present and vulnerable to attack." *Id.* (emphasis omitted).

67. Rather, the locations covered by § 39-17-1311(a) are entirely ordinary and nonsensitive public locations "where people typically congregate," *Bruen*, 142 S. Ct. at 2133, which merely happen to be owned or managed — on behalf of the public — by the government. In fact, the "public parks" covered by § 39-17-1311(a) include not only manicured parks within city centers but also vast expanses of uninhabited wilderness — places where people certainly do not "typically congregate" but yet where the mere possession of firearms is entirely prohibited (subject to limited exceptions that do not apply to all the Plaintiffs).

68. In addition to not constituting a "sensitive location" of the sort where firearm possession historically may have been restricted, § 39-17-1311(a) also violates the historical test laid out in *Bruen*, which Plaintiffs submit is the appropriate test for analyzing challenges under Article I, Section 26. Simply put, there is no relevant historical analogue — let alone the widespread pattern of relevant historical regulation that is required — for banning firearms in public parks and other similar recreational areas restricted by § 39-17-1311(a).

69. As of 1791, there was no national "historical tradition of firearm regulation" with respect to carrying a firearm in the areas that are enumerated in Tennessee Code Annotated § 39-17-1311(a). *Bruen* at 2126. As of 1868, there was no national "historical tradition of firearm regulation" with respect to carrying a firearm in the areas that are enumerated in Tennessee Code Annotated § 39-17-1311(a). *Bruen* at 2126; *see Stickley*, 2022 Va. Cir. LEXIS 201, at *51 (explaining the lack of any historical tradition — and in fact finding the opposite tradition — with respect to banning firearms in "public places, fairs, and markets"). *See also Antonyuk v. Hochul*, No. 1:22-CV-0986 (GTS/CFH), 2022 WL 16744700, 2022 U.S. Dist. LEXIS 201944, at *182–87, *189–92 (N.D.N.Y. Nov. 7, 2022) (conducting a historical survey and finding no tradition of banning firearms in "public parks"); *id.* at *209–15 (finding no analogues with

respect to "theaters," "conference centers," and "banquet halls," somewhat akin to a "civic center" under § 39-17-1311(a)); *id.* at *220 ("Community Center").

70. Without any historical pedigree showing that the public carry of arms in public parks and recreational areas is categorically outside the scope of protections offered by the right to keep and bear arms, Tennessee Code Annotated § 39-17-1311(a) is unconstitutional under Article I, Section 26 of the Tennessee Constitution. A federal court in the Northern District of New York held that, after *Bruen*, a ban on firearm carry in a "public park" is unconstitutional under the Second Amendment. *See Antonyuk*, 2022 WL 16744700, 2022 U.S. Dist. LEXIS 201944, at *192. So too did a state court in Virginia, with respect to that state's constitutional provision (Article I, Section 13) protecting the right to keep and bear arms, when analyzing a City's ban on firearms in "public parks." *Stickley*, 2022 Va. Cir. LEXIS 201, at *47–50.

71. This Court's intervention is necessary to make it clear that the State of Tennessee is not free to thumb its nose at the text of Article I, Section 26 which, like the Second Amendment, is neither a "constitutional orphan" nor a "second-class right." *Silvester v. Becerra*, 138 S. Ct. 945, 952 (2018) (Thomas, J., dissenting from denial of certiorari); *see McDonald*, 561 U.S. at 780; *Bruen* at 2156.

PRAYER FOR RELIEF

Plaintiffs request judgment be entered in their favor and against Defendants as follows:

1. An order preliminarily and permanently enjoining the State of Tennessee, the Defendants, their officers, agents, servants, employees, and all persons in active concert or participation with them who receive actual notice of the injunction, from enforcing any provision of Tennessee Code Annotated § 39-17-1311;

2. A judgment declaring Tennessee Code Annotated § 39-17-1311 unconstitutional under Article I, Section 26 of the Tennessee Constitution;

3. A judgment declaring Tennessee Code Annotated § 39-17-1307(a) unconstitutional under Article I, Section 26 of the Tennessee Constitution;

4. Attorney fees and costs pursuant to any applicable doctrine or legal theory;

5. Declaratory relief consistent with the injunction;

6. Costs of suit; and

7. Any further relief as the Court deems just and appropriate.

Respectfully submitted:

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