

IN THE CIRCUIT COURT FOR THE STATE OF TENNESSEE
THIRTIETH JUDICIAL DISTRICT
AT MEMPHIS

TY TIMMERMANN,)
GUN OWNERS OF AMERICA, INC.,)
GUN OWNERS FOUNDATION, and)
TENNESSEE FIREARMS ASSOCIATION,)

Plaintiffs,)

v.)

Civil No.: _____

CITY OF MEMPHIS and)
CERELYN DAVIS, in her Official)
Capacity as the Chief of the Memphis)
Police Department,)

Defendants.)

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS'
MOTION FOR A TEMPORARY RESTRAINING ORDER, PRELIMINARY
INJUNCTION, AND/OR PERMANENT INJUNCTION

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I. INTRODUCTION.

Recognizing the need for uniformity of firearm regulation across the state, and to effectuate and protect the constitutionally enumerated right to keep and bear arms, the Tennessee General Assembly has preempted the “whole field of the regulation of firearms.” Tenn. Code Ann. § 39-17-1314(a). To that end, state law clearly and expressly prohibits any “county, city, town, municipality, or metropolitan government” from deviating from state law “including, but not limited to, the use, purchase, transfer, taxation, manufacture, ownership, possession, carrying, sale, acquisition, gift, devise, licensing, registration, storage, and transportation” of “firearms, ammunition, or components of firearms or ammunition, or combinations thereof.” *Id.*

In blatant contravention of that prohibition, on July 23, 2024, the Memphis City Council promulgated Ordinance No. 5908 (the “Ordinance”), which proposed for electoral approval three gun control measures: (1) a ban on unlicensed handgun carry, whether on one’s person or within one’s vehicle, and a requirement that firearms stored in an unattended vehicle be locked out of plain view; (2) a ban on the possession and commercial sale of “assault rifles,” a vague and undefined term; and (3) an “extreme risk protection order” or so-called “red flag” law authorizing the issuance of court orders to search and seize firearms from individuals who have committed no crime but nevertheless are deemed to be “dangerous” following an *ex parte* hearing.¹

On November 5, 2024, voters within the City of Memphis approved the Ordinance by a more than four-to-one margin.² Accordingly, pursuant to Section 5 of the Ordinance, all three measures “take effect ... on January 1, 2025” because each of the “questions [wa]s approved by a majority of the voters voting thereon in an election to be held on the 5th day of November 2024.”

¹ Full Ordinance text available at <https://tinyurl.com/yu64n3sb>. November 5, 2024 ballot text available at <https://tinyurl.com/yc5rezmb>.

² 2024 Memphis Area Election Results, *Com. Appeal*, <https://tinyurl.com/4ppka82j> (Nov. 6, 2024).

To that end, Plaintiffs Ty Timmermann, Gun Owners of America, Inc. (“GOA”), Gun Owners Foundation (“GOF”), and Tennessee Firearms Association (“TFA”) respectfully request immediate entry of a Temporary Restraining Order to preserve the status quo and block Defendants’ enforcement of Ordinance No. 5908 in its entirety. Plaintiffs additionally request preliminary followed by permanent injunctive relief to rectify and prevent any further violations of law.

II. PLAINTIFFS HAVE STANDING.

A. Plaintiffs Have Standing to Sue Under Tennessee’s Firearm Preemption Statute.

Tennessee statutes can expressly confer standing for aggrieved parties to vindicate protected interests in court. *See, e.g., Osborn v. Marr*, 127 S.W.3d 737, 740 (Tenn. 2004) (citation omitted) (“When a statute creates a cause of action and designates who may bring an action, the issue of standing is interwoven with that of subject matter jurisdiction and becomes a jurisdictional prerequisite.”); *In re Lyric A.*, 544 S.W.3d 341, 343 (Tenn. Ct. App. 2017) (“In the case of parental termination, standing is conferred by Tenn. Code Ann. § 36-1-113....”). The Tennessee General Assembly specifically intended for parties “adversely affected” by local firearm regulations to “file an action in a court of competent jurisdiction” against offending localities in order to seek “[d]eclaratory and injunctive relief” and “[d]amages,” and for these “adversely affected” parties ultimately to “prevail[.]” Tenn. Code Ann. §§ 39-17-1314(g)(1)(A), (g)(1)(B), (i).³ Plaintiffs therefore begin by discussing the statutory standard to challenge the Ordinance on preemption grounds, which they clearly satisfy.

³ *See also* Opinion No. 21-13, 2021 Tenn. AG LEXIS 14, at *1-2 (Tenn. Att’y Gen. Ops. Aug. 31, 2021) (recognizing that, in order to have standing under Tennessee’s firearm preemption statute, “[o]nly a court of competent jurisdiction could determine, based on the specific facts and circumstances, whether a particular [person] has demonstrated, as required by Tenn. Code Ann. § 39-17-1314(g)(1), that he or she has been ‘adversely affected’”).

Tennessee’s firearm preemption statute provides that “a party may file an action in a court of competent jurisdiction against any of the persons or entities listed in subdivisions (g)(1)(A)(i) and (ii), if the party is adversely affected by: (i) An ordinance ... that is adopted ... by a ... city ... that violates this section....” Tenn. Code Ann. § 39-17-1314(g)(1)(A)(i). The statute further provides that it “shall apply to any ordinance ... that is adopted ... on or after July 1, 2017....” *Id.* § (g)(2). As defined by Tennessee law:

[A] party is “adversely affected” if:

- (1) The party is an individual who:
 - (A) Lawfully resides within the United States;
 - (B) May legally possess a firearm under Tennessee law; and
 - (C) Is or was subject to the ordinance ... that is the subject of an action filed under subsection (g). An individual is or was subject to the ordinance ... if the individual is or was physically present within the boundaries of the political subdivision for any reason; or
- (2) The party is a membership organization that:
 - (A) Includes two (2) or more individuals described in subdivision (h)(1); and
 - (B) Is dedicated in whole or in part to protecting the rights of persons who possess, own, or use firearms for competitive, sporting, defensive, or other lawful purposes. [*Id.* § (h).]

First, this Court is “of competent jurisdiction,” *id.* § (g)(1)(A), because “[t]he circuit court is a court of general jurisdiction....” Tenn. Code Ann. § 16-10-101. Moreover, this Court may “hear[] and determine[]” cases “upon the principles of a court of equity, with power to order and take all proper accounts, and otherwise to perform the functions of a chancery court.” Tenn. Code Ann. § 16-10-111; *see also* Tenn. Code Ann. §§ 1-3-121, 39-17-1314(g)(1)(B)(i); Compl. ¶¶12-13, Prayer for Relief.

Second, Plaintiffs have filed an “action ... against” a “city” to challenge an “ordinance ... adopted ... by” the city “that violates this section” and which was “adopted ... on or after July 1, 2017....” Tenn. Code Ann. §§ 39-17-1314(g)(1)(A)(i), (g)(2); *see* Compl. ¶3 (challenging the Memphis City Council’s “Ordinance No. 5908” adopted in 2024), ¶4 (noting the Ordinance

measures now “take effect ... on January 1, 2025” via fulfillment of a condition precedent), ¶¶14-19 (detailing Memphis’ adoption of the Ordinance and subsequent electoral approval via referendum), ¶43 (noting that, “despite being placed on the November ballot, it was the City of Memphis that ‘adopt[ed]’ the Ordinance, using variations of the word [‘adopt’] no fewer than eight times in the Ordinance document”). And, as explained in greater detail in Section III(A), *infra*, the Ordinance “violates this section [Tenn. Code Ann. § 39-17-1314],” *id.* § (g)(1)(A)(i), because the Ordinance regulates, *inter alia*, the “use,” “purchase,” “manufacture,” “possession,” “carrying,” “sale,” “acquisition,” “licensing,” “storage,” and “transportation” of “firearms,” Compl. ¶¶23, 26, 27, and the statute “preempts the whole field of the regulation of firearms, ... to the exclusion of all ... city ... ordinances....” Tenn. Code Ann. § 39-17-1314(a).

Third, Plaintiffs are “adversely affected” parties within the meaning of the statute. Indeed, Ty Timmermann is “adversely affected” because he is “an individual who: (A) Lawfully resides within the United States; (B) May legally possess a firearm under Tennessee law; and (C) Is ... subject to the ordinance” and he “is ... physically present within the boundaries of the political subdivision....” *Id.* § (h)(1); *cf.* Compl. ¶6 (“Ty Timmermann is a natural person, a citizen of the United States and of the State of Tennessee, an adult over the age of 21, and a resident of the City of Memphis, residing within City limits. ... Mr. Timmermann is a law-abiding person who is eligible to possess firearms under federal and Tennessee law.”).

Likewise, Plaintiffs GOA, GOF, and TFA are “adversely affected” because they are “membership organization[s] that: (A) Include[] two (2) or more individuals described in subdivision (h)(1); and (B) [are] dedicated in whole or in part to protecting the rights of persons who possess, own, or use firearms for competitive, sporting, defensive, or other lawful purposes.” Tenn. Code Ann. § 39-17-1314(h)(2); *cf.* Compl. ¶7 (“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 across Tennessee and including residents of the City of Memphis besides Mr. Timmermann, many of whom lawfully carry firearms....”), ¶8 (similar for GOF), ¶9 (similar for TFA). Plaintiffs therefore have satisfied the statutory standard and have standing to challenge the Ordinance in this Court.

B. Plaintiffs Have Standing to Sue for All Causes of Action.

Plaintiffs separately have standing to challenge the Ordinance under the traditional standing analysis. To show standing, an individual plaintiff must suffer a concrete and particularized invasion of a legally protected interest that is either actual or imminent. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992). This injury must be fairly traceable to the challenged action of the defendant and likely to be redressed by a favorable decision. *Id.* at 560-61. Tennessee case law mirrors this federal standard and requires:

1) a distinct and palpable injury; that is, an injury that is not conjectural, hypothetical, or predicated upon an interest that a litigant shares in common with the general public; 2) a causal connection between the alleged injury and the challenged conduct; and 3) the injury must be capable of being redressed by a favorable decision of the court. [*Fisher v. Hargett*, 604 S.W.3d 381, 396 (Tenn. 2020).]

In a pre-enforcement challenge to governmental action, a plaintiff satisfies the injury-in-fact requirement when he alleges “an intention to engage in a course of conduct arguably affected with a [protected] interest, but proscribed by [law], and there exists a credible threat of prosecution thereunder.” *Babbitt v. United Farm Workers Nat’l Union*, 442 U.S. 289, 298 (1979); *see also Frogge v. Joseph*, 2022 Tenn. App. LEXIS 240, at *37-38 (June 20, 2022) (adopting the same).

In these cases, “[a] party facing prospective injury has standing to sue where the threatened injury is real, immediate, and direct,” *Davis v. FEC*, 554 U.S. 724, 734 (2008), but “an actual arrest, prosecution, or other enforcement action is not a prerequisite to challenging the law.” *Susan*

B. Anthony List v. Driehaus, 573 U.S. 149, 158 (2014). Indeed, ““when dealing with pre-enforcement challenges to recently enacted (or, at least, non-moribund) [regulations] that facially restrict [protected] activity by the class to which the plaintiff belongs, courts will assume a credible threat of prosecution’ absent compelling evidence to the contrary. ‘This is because a court presumes that a legislat[ive body] enacts a [regulation] with the intent that it be enforced.’” *Friends of George’s, Inc. v. Mulroy*, 108 F.4th 431, 450 (6th Cir. 2024) (Mathis, J., dissenting) (citations omitted); *see also Nastri v. Dykes*, 2024 U.S. App. LEXIS 7445, at *3-4 (2d Cir. Mar. 29, 2024) (“In other words, we presume that a credible threat of enforcement exists, and require the government to ‘rebut’ that inference by ‘disavowing’ its intent to enforce the statute...”)). Due to the clear statutory violations at issue here, Plaintiffs easily satisfy these requirements.

1. Plaintiffs Satisfy Injury-in-Fact, Causation, and Redressability.

Defendants’ Ordinance proscribes firearm-related conduct which state law both allows and expressly protects. The Ordinance prohibits Plaintiffs from carrying handguns in Memphis, whether on their person or within a vehicle, “without possessing a valid handgun carry permit.” Compl. ¶21. The Ordinance likewise prohibits Plaintiffs from storing firearms in vehicles unless locked out of plain view. *Id.* Next, the Ordinance bans the possession of so-called “assault rifles” throughout the City, granting a limited exception only for those “with valid handgun permits” to possess “on their privately owned property or at a shooting range.”⁴ *Id.* ¶24. Moreover, the Ordinance altogether bans the “commercial sale” of “assault rifles” for ordinary citizens. *Id.* Finally, the Ordinance establishes a ‘red-flag’ disarmament scheme which authorizes courts to issue warrants to search for and seize firearms owned by those declared to be ‘dangerous’ in a

⁴ Notably, this exception would seem to exclude *tenants* from even keeping such firearms locked away within their apartments, as the exception reaches only individuals on “their” own “privately owned property.” *Id.*

secret *ex parte* hearing with no notice or opportunity to be heard. *Id.* ¶27. Violations of the Ordinance carry monetary penalties of up to \$250 per infraction. *Id.* ¶6. And in the case of the ‘red-flag’ disarmament scheme, a court order results in the loss of Second Amendment rights and seizures of the person – up to and including death – at the hands of law enforcement if one resists the patently unlawful seizure or is caught off-guard during the execution of a warrant.

Plaintiffs have a legally cognizable interest in *not* being subject to these restrictions, as state law expressly preempts each. *See* Tenn. Code Ann. §§ 39-17-1307(g), 39-17-1314(a), 39-17-1329(b). Next, the injuries to Plaintiffs’ interests are imminent, as “all three measures ‘take effect ... on January 1, 2025’ because each of the ‘questions [wa]s approved by a majority of the voters voting thereon in an election to be held on the 5th day of November 2024.’” Compl. ¶4. Defendants’ Ordinance is the direct cause of Plaintiffs’ injuries. *See, e.g., id.* ¶6 (“Mr. Timmermann desires to and would continue carrying his firearm in public and in his vehicle throughout the City of Memphis, but for fear of prosecution under the challenged Ordinance Mr. Timmermann fears that Defendants will enforce the Ordinance against him if he engages in his desired course of conduct.”); *see also id.* ¶7 (“GOA’s members in Memphis are at risk of being deprived their rights to keep and bear arms, without due process, via enforcement of the Ordinance’s “extreme risk protection orders.”), ¶¶8-9 (similar for GOF and TFA members). And a favorable decision from this Court would preserve the status quo and therefore redress Plaintiffs’ injuries. *See* Tenn. Code Ann. § 39-17-1314.

Plaintiffs GOA, GOF, and TFA likewise have standing to represent the interests of their members who reside or find themselves in the City of Memphis and who wish to engage in the conduct which the Ordinance prohibits. *See* Compl. ¶¶7-9. In addition to the express statutory allowance noted above, organizations have standing to represent the interests of their members:

An association has standing to bring suit on behalf of its members when its members would otherwise have standing to sue in their own right, the interests at stake are germane to the organization's purpose, and neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit. *Hunt v. Washington State Apple Advertising Comm'n*, 432 U.S. 333, 343, 97 S.Ct. 2434, 53 L.Ed.2d 383 (1977). [*Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 180-81 (2000).]

Tennessee law recognizes the doctrine of representational standing, *Citizens for Collierville, Inc. v. Town of Collierville*, 977 S.W.2d 321, 323 (Tenn. Ct. App. 1998), and Plaintiffs GOA, GOF, and TFA satisfy each of the above prongs, being membership organizations or organizations with indicia of membership that assert the gun rights of their members, whose individual participation is not required to grant full relief. *See* Compl. ¶¶7-9.

2. *Defendants Have Not Disavowed Enforcement and Therefore Pose a Credible Threat of Prosecution.*

Thus far, Defendants have not disavowed enforcement of the Ordinance, and so a credible threat of prosecution remains. *See Nastri*, 2024 U.S. App. LEXIS 7445, at *3-4. Indeed, the City went so far as to acknowledge the illegality of its Ordinance, Compl. ¶15, but nevertheless adopt it anyway and render it effective January 1, 2025. *Id.* ¶¶43, 4. Plaintiffs therefore have standing to challenge the Ordinance on all causes of action.

III. PLAINTIFFS ARE ENTITLED TO PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF.

Tennessee Rule of Civil Procedure 65 authorizes issuance of an injunction when the moving party's rights are being or will be violated and either a) the moving party will suffer immediate and irreparable injury, loss, or damage pending a final judgment in the action, or b) the acts of the adverse party will tend to render a final judgment ineffectual. Rule 65.04(2). The factors to be considered are:

When Authorized. A temporary injunction may be granted during the pendency of an action if it is clearly shown by verified complaint, affidavit or other evidence

that the movant’s rights are being or will be violated by an adverse party and the movant will suffer immediate and irreparable injury, loss or damage pending a final judgment in the action, or that the acts or omissions of the adverse party will tend to render such final judgment ineffectual. [*Id.*]

Aside from the “ineffectual” prong, most Tennessee courts apply a four-part test to evaluate requests for injunctive relief under the first alternative prong of Rule 65.04(2):

“The most common description of the standard for preliminary injunction in federal and state courts is a four-factor test: (1) the threat of irreparable harm to plaintiff if the injunction is not granted; (2) the balance between this harm and the injury that granting the injunction would inflict on the defendant; (3) the probability that plaintiff will succeed on the merits; and (4) the public interest.” Robert Banks, Jr. & June F. Entman, *Tennessee Civil Procedure* § 4-3(1) (1999).

S. Cent. Tenn. R.R. Auth. v. Harakas, 44 S.W.3d 912, 919 n.6 (Tenn. Ct. App. 2000). The four factors are not independent elements that each must be met, but rather are the factors to be considered together. *See Coal. to Def. Affirmative Action v. Granholm*, 473 F.3d 237, 244 (6th Cir. 2006).

A. Plaintiffs Are Likely to Succeed on the Merits.

1. *The Ordinance’s Handgun Carry, Travel, and Storage Restrictions Violate Tenn. Code Ann. § 39-17-1307(g) (Permitless Carry of Handguns) and Tenn. Code Ann. § 39-17-1314(a) (Preemption of Local Firearm Regulation).*

The first Ordinance measure (Question 1 of 3) amends the City Charter to read:

1. No person shall be allowed to carry a handgun in the City of Memphis without possessing a valid handgun carry permit.
2. No person shall be allowed to carry, store, or travel with a handgun in a vehicle in the City of Memphis without possessing a valid handgun permit.
3. It shall be unlawful for a person to store a firearm, whether loaded or unloaded, or firearm ammunition, in a motor vehicle or boat while the person is not in the motor vehicle or boat unless the firearm or firearm ammunition is kept from ordinary observation and locked within the trunk, utility or glove box, or a locked container securely affixed to the motor vehicle or boat. [Compl. ¶21.]

This measure violates at least two provisions of Tennessee law. First, by requiring a permit in order to carry a handgun in public, this measure conflicts with the permitless carry regime recently established by the Tennessee General Assembly, which expressly decriminalizes and intentionally allows persons to publicly carry handguns *without a permit*. Indeed, Tenn. Code Ann. § 39-17-1307(g) allows a person to “carry[], whether openly or concealed, a handgun” so long as they are “at least twenty-one (21) years of age,” “lawfully possess[] the handgun,” and are “in a place where the person is lawfully present.” This permitless carry regime applies in all counties and jurisdictions in the state, including Shelby County and the City of Memphis.

Second, this measure falls squarely within Tenn. Code Ann. § 39-17-1314(a), Tennessee’s general firearm preemption statute. The Ordinance purports to prohibit the “*carry*” of a “*handgun*” without a “*permit*.” But Tenn. Code Ann. § 39-17-1314(a) “preempts the whole field of the regulation of *firearms* ... including, but not limited to, the ... *possession, carrying, ... [and] licensing*” of firearms. This measure further provides that “[n]o person shall be allowed to ... *store, or travel* with a handgun in a vehicle....” But Tenn. Code Ann. § 39-17-1314(a) preempts all local regulations on the “*storage*[] and *transportation*” of firearms. This measure therefore violates Tenn. Code Ann. § 39-17-1314(a), which clearly states that “[n]o county, city, town, municipality, or metropolitan government nor any local agency, department, or official shall occupy *any part* of the field regulation of firearms....”

2. *The Ordinance’s Ban on the Possession and Commercial Sale of “Assault Rifles” Violates Tenn. Code Ann. § 39-17-1314(a) (Preemption of Local Firearm Regulation).*

The second Ordinance measure (Question 2 of 3) amends the City Charter to read:

1. The citizens of Memphis hereby find and declare that the proliferation and use of assault weapons pose a threat to the health, safety, and security of all citizens of Memphis.

2. Hereafter, it shall be unlawful and prohibited for a person to possess or carry, openly or concealed, any assault rifles in the City of Memphis. Persons with valid handgun permits are exempt from this restriction when possessing or carrying an assault rifle on their privately owned property or at a shooting range.

3. Hereafter, the commercial sale of assault rifles within the City of Memphis is unlawful and is hereby prohibited.

4. The provisions of this Chapter shall not apply to the commercial sale of assault rifles to:

4.1 Any federal, state, local law enforcement agency;

4.2 The United States Armed Forces or department or agency of the United States;

4.3 Tennessee National Guard, or a department, agency, or political subdivision of a state; or

4.4 A Law Enforcement Officer.

5. Pre-existing owners that can demonstrate that the commercial sale of an assault rifle was completed prior to the Effective Date of January 1, 2025, which means that prior to January 1, 2025, the purchaser completed an application, passed a background check, and has a receipt or purchase order for said purchase, without regard to whether the purchaser has actual physical possession of the Assault Rifle, shall be considered a pre-existing purchaser. [Compl. ¶24.]

At the outset, this measure's ineptly written language fails to define "assault rifle" and therefore is hopelessly vague, inviting arbitrary and discriminatory enforcement, where what constitutes an "assault rifle" will be in the eye of the beholder.⁵ This measure likewise fails to explain the relevance of being a "pre-existing purchaser," providing only a definition for the term, and it also fails to identify just what "application" it contemplates, as neither federal nor Tennessee law requires a person to "apply" for approval to purchase an "assault rifle" in the first place. It is thus entirely unclear how a person would comply with the Ordinance's exemption.

This measure also falls squarely within Tenn. Code Ann. § 39-17-1314(a) preemption. The Ordinance purports to make it "unlawful and prohibited" for a person to "*possess or carry*, openly

⁵ One Councilmember apparently believes the Ordinance bans "any future sale of *automatic weapons*," meaning machineguns. Alex Coleman, *Memphis Voters Say Yes to 3 Gun Control Measures*, *MSN* (Nov. 5, 2024), <https://tinyurl.com/4ke74twc> (emphasis added). But that is not evident from the Ordinance's text.

or concealed, *any assault rifles*” anywhere, providing a narrow exception for “*permit*” holders to possess and carry when on private property and at ranges. But Tenn. Code Ann. § 39-17-1314(a) “preempts the whole field of the regulation of *firearms* ... including, but not limited to, the ... *possession, carrying, ... [and] licensing*” of firearms. Moreover, this measure altogether bans the commercial “*sale*” of these firearms within the City. But Tenn. Code Ann. § 39-17-1314(a) preempts all local regulations on the “*sale*” and “*acquisition*” of firearms. This measure therefore violates Tenn. Code Ann. § 39-17-1314(a), which clearly states that “[n]o county, city, town, municipality, or metropolitan government nor any local agency, department, or official shall occupy *any part* of the field regulation of firearms....”

3. *The Ordinance’s Creation of “Extreme Risk Protection Orders” Violates Tenn. Code Ann. § 39-17-1314(a) (Preemption of Local Firearm Regulation) and Tenn. Code Ann. § 39-17-1329(b) (Preemption of Local Red-Flag Laws).*

The third Ordinance measure (Question 3 of 3) amends the City Charter with a verbose ‘red flag’ law. The Ordinance authorizes the issuance of *ex parte* court orders prohibiting a person from “*possessing,*” “*using,*” “*purchasing,*” “*manufacturing,*” or otherwise “*receiving*” any “*firearm.*” But Tenn. Code Ann. § 39-17-1314(a) “preempts the whole field of the regulation of *firearms* ... including, but not limited to, the *use, purchase, ... manufacture, ... possession, ... [and] acquisition*” of firearms. This measure therefore violates Tenn. Code Ann. § 39-17-1314(a), which clearly states that “[n]o county, city, town, municipality, or metropolitan government nor any local agency, department, or official shall occupy *any part* of the field regulation of firearms....”

Moreover, because this measure authorizes “a written order or warrant issued by a judge, magistrate, or other judicial officer, with the primary purpose of reducing the risk of firearm-related death or injury” by prohibiting a named individual from possessing firearms and providing

for their surrender, this measure is separately preempted under Tenn. Code Ann. § 39-17-1329(b), which “preempts the entire field of legislation regarding extreme risk protection orders to the exclusion of all county, city, town, municipality, or metropolitan government law, ordinances, resolutions, enactments, or regulation.”

B. Plaintiffs Face Irreparable Harm Absent Preliminary Relief.

Plaintiffs will suffer “actual and imminent” irreparable harm absent preliminary relief. *Abney v. Amgen, Inc.*, 443 F.3d 540, 552 (6th Cir. 2006); Compl. ¶4 (noting “all three measures ‘take effect ... on January 1, 2025’”). Indeed, it is black-letter law that “[a]n injury is irreparable if it cannot be undone through monetary remedies,” *Performance Unlimited v. Questar Publishers*, 52 F.3d 1373, 1382 (6th Cir. 1995), and Plaintiffs’ loss of their statutory protections and abilities to carry handguns without permits, acquire and possess “assault rifles,” and be free from “extreme risk protection orders” cannot be quantified with money damages. See Compl. ¶¶6-9, Prayer for Relief; see also *Humphries v. Minbiole*, 2012 Tenn. App. LEXIS 776, at *18 (Nov. 8, 2012) (“‘Irreparable injury,’ ... turns on whether there is a complete remedy at law. If there is a complete, adequate, and efficient remedy at law, the injunction is not proper. Thus, in cases where substantial redress can be afforded by the payment of money, an injunction would be improper.”).

The Ordinance’s “assault rifle” sales ban will cause Plaintiff GOA’s gun-store members even further irreparable harm. If the Ordinance bans the sale of some 20%⁶ of these Memphis gun stores’ business inventory, these stores will suffer the “loss of customer goodwill,” Compl. ¶7, and courts have “recognized that a loss of business goodwill may constitute irreparable harm because of the difficulty in calculating damages.” *Langley v. Prudential Mortg. Cap. Co., LLC*, 554 F.3d 647, 649 (6th Cir. 2009); see also *Ohio v. Becerra*, 87 F.4th 759, 783 (6th Cir. 2023) (noting that

⁶ See Compl. ¶40 (“As of 2020, firearms pejoratively labeled as ‘assault’ weapons comprise approximately 20% of all firearms sold.”).

such “economic injuries caused by [governmental] action are generally unrecoverable” absent a waiver of immunity and therefore constitute “irreparable harm”); *cf.* Tenn. Code Ann. § 39-17-1314(i)(1)(A) (waiving immunity only as to “[a]ctual damages, including consequential damages”); *accord ESI/Emp. Sols., L.P. v. City of Dallas*, 531 F. Supp. 3d 1181, 1196 (E.D. Tex. 2021) (“Absent an injunction, the [Plaintiffs] also face irreparable harm because they would bear the cost of complying with the Ordinance. ... Because the City enjoys governmental immunity[,] ... the [Plaintiffs] will not be able to remedy their injuries at law....”); *Save Jobs USA v. DHS*, 105 F. Supp. 3d 108, 114 (D.D.C. 2015) (citations omitted) (“Normally ‘economic loss does not, in and of itself, constitute irreparable harm.’ However, ‘courts have recognized that economic loss may constitute “irreparable harm” where a plaintiff’s alleged damages are unrecoverable.’ This issue often arises in suits against government defendants, where sovereign immunity or other laws or doctrines may preclude monetary relief.”).

Moreover, although Plaintiffs do not bring a constitutional challenge under the Tennessee Constitution, Article I, Section 26, to vindicate their right to keep and bear arms, the Ordinance nevertheless clearly violates their rights, which is a *per se* irreparable harm. *See Elrod v. Burns*, 427 U.S. 347, 373 (1976) (“The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.”); *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 70 (2022) (“The constitutional right to bear arms in public for self-defense is not ‘a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees.’”).

And as to the “extreme risk protection orders,” Plaintiffs are subject to an unreasonable risk that they may be arbitrarily ‘red-flagged’ under the City of Memphis’ preempted and illegal Ordinance. *See* Compl. ¶49 (explaining harm of “extreme risk protection orders” to members and supporters of Plaintiffs GOA, GOF and TFA.). Of course, the Ordinance’s “extreme risk

protection orders” risk the ultimate harm of a police raid precipitating bodily injury or death. Plaintiffs thus face imminent irreparable harm absent preliminary relief.

C. The Equitable Factors Overwhelmingly Favor Plaintiffs.

The balance-of-harms and public-interest factors “merge when the Government is the opposing party.” *Nken v. Holder*, 556 U.S. 418, 435 (2009). In cases challenging the legality or constitutionality of government action, a finding of a likelihood of success and irreparable harm necessarily satisfies the equitable factors as a matter of course. Indeed, courts across the country routinely hold that, with respect to the balance of harms, “a defendant ‘cannot suffer harm from an injunction that merely ends an unlawful practice because ‘[g]ranted preliminary injunctive relief will simply require [Defendants] to comply with their legal obligations.’” *Air Prods. Blue Energy, LLC v. Livingston Par. Gov’t*, 2022 U.S. Dist. LEXIS 231839, at *19-20 (M.D. La. Dec. 26, 2022); accord *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013) (“[T]he government[] ... cannot suffer harm from an injunction that merely ends an unlawful practice....”); *Xiaomi Corp. v. DOD*, 2021 U.S. Dist. LEXIS 46496, at *36-37 (D.D.C. Mar. 12, 2021) (same); *Sanchez v. McAleenan*, 2024 U.S. Dist. LEXIS 52056, at *42 (D. Md. Mar. 25, 2024) (“Having now found that Defendants’ conduct was unlawful, the Court finds that the balance of hardships weighs even more strongly in favor of Plaintiffs. Defendants ‘cannot suffer harm from an injunction that merely ends an unlawful practice.’”); *Cigar Ass’n of Am. v. City of Philadelphia*, 500 F. Supp. 3d 428, 437 (E.D. Pa. 2020) (same). Defendants will suffer no harm from an injunction merely maintaining the status quo of *compliance* with state law.

Likewise, the public interest mandates swift correction of governmental violations of law. *See, e.g., Air Prods. Blue Energy, LLC*, 2022 U.S. Dist. LEXIS 231839, at *20 (footnote omitted) (holding that “[a]n injunction to enforce the correct application of the law, in and of itself, serves

the public interest,’ and ‘there is no public interest in the enforcement of an unlawful ordinance’”); *see also id.* (“Because the [Ordinance] is preempted by state law, these factors are satisfied.”); *Cigar Ass’n of Am.*, 500 F. Supp. 3d at 438 (“Courts will not second-guess the legislature’s determination that compliance with a valid statute is in the public interest. This is especially true where, as here, a preliminary injunction would merely preserve the status quo.”). Moreover, much like how “it is always in the public interest to prevent the violation of a party’s constitutional rights,” *Jones v. Caruso*, 569 F.3d 258, 278 (6th Cir. 2009), so too is it always in the public interest to prevent the violation of a party’s statutory rights, especially when a challenged regulation proscribes the exercise of a constitutional right. *See* U.S. Const. amend. II; Tenn. Const. art. I, § 26. Thus, although Plaintiffs do not bring a constitutional claim in the case at bar, the public interest nevertheless “is promoted by the robust enforcement of constitutional rights.” *Am. Freedom Def. Initiative v. Suburban Mobility Auth. for Reg’l Transp. (SMART)*, 698 F.3d 885, 896 (6th Cir. 2012).⁷

IV. CONCLUSION.

For the foregoing reasons, this Court should issue a temporary restraining order prohibiting enforcement of, and then preliminarily and thereafter permanently enjoin, the City of Memphis Ordinance No. 5908 as violative of state law, Tenn. Code Ann. §§ 39-17-1307(g), 39-17-1314(a), and 39-17-1329(b).

⁷ Although Fed. R. Civ. P. 65(c) requires that a bond or other security be provided as a condition of issuing preliminary injunctions in federal court, this requirement may be dispensed with when there is no risk of financial harm. *See, e.g., Fed. Prescription Serv., Inc. v. Am. Pharm. Ass’n*, 636 F.2d 755, 759 (D.C. Cir. 1980); *Doctor’s Assocs., Inc. v. Stuart*, 85 F.3d 975, 985 (2d Cir. 1996). Even courts that view Rule 65(c) as mandatory are amenable to setting bonds at zero. *See, e.g., Hoechst Diafoil Co. v. Nan Ya Plastics Corp.*, 174 F.3d 411, 421 n.3 (4th Cir. 1999). The same should apply under Tennessee Rule of Civil Procedure 65 and, given the nature of this case, this Court should dispense with the bond requirement, or set it at one dollar.

Respectfully submitted,

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CERTIFICATE OF SERVICE

A copy of the foregoing was served on all Defendants with the Complaint.

/s/ John I. Harris III