IN THE COURT OF APPEALS OF TENNESSEE
AT JACKSON

STEPHEN L. HUGHES, DUNCAN O'MARA, ELAINE KEHEL, GUN OWNERS OF AMERICA, INC., and GUN OWNERS FOUNDATION, Plaintiffs - Appellees, v. BILL LEE, in his official capacity as Governor for the State of Tennessee,*et al.* Defendants-Appellants	)	W2025-01327-COA-R3-CV Gibson Chancery No. 24475

APPELLEES' RESPONSE IN OPPOSITION TO APPELLANTS' EMERGENCY MOTION FOR STAY PENDING APPEAL

INTRODUCTION

Defendants-Appellants ("Defendants")[1] appeal from a ruling on summary judgment by a three-judge panel dated August 22, 2025,[2] which

[1] One Defendant, Sheriff Paul Thomas, has not appealed the three-judge panel's ruling.

[2] A copy of the ruling by the three-judge panel is contained in Defendants' Appendix, Volume II, Exhibit 5, at 319-362. (Note: Defendants' Appendix volumes contain continuous Bates Numbering in

declared that two of Tennessee's gun control statutes are unconstitutional. The three-judge panel's ruling was limited to that declaratory ruling.

On September 2, 2025, Defendants filed a motion for stay pending appeal with the three-judge panel, consisting of 5 and ½ pages of analysis and argument.[3] Although admitting that the challenged statutes are unconstitutional in some applications, Defendants theorized that the panel had "ignored … longstanding limits on judicial authority." Defendants Motion, pp. 2, 5. App'x II, at p. 365, 368. In support, Defendants proffered two arguments based not on claims of legal error, but which instead chided the panel for having intentionally chosen a path of "maximum disruption" and having created an environment of "unnecessary confusion and risk." *Id.*, p. 5 App'x II, at p. 368. On September 10, 2025, the panel issued a thorough opinion rejecting Defendants' arguments and denying their motion for a stay.[4]

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across the volumes the format "Hughes Mot for Stay_####". References herein to the pages of the appendices are to these Bates numbered pages.)

[3] *Id.,* pp. 364-369.

[4] *Id.*, pp. 383-387.

On September 15, 2025, Defendants filed with this Court an Emergency Motion for Stay Pending Appeal ("Motion for Stay") pursuant to Rule 7(a) of the Tennessee Rules of Appellate Procedure. In stark contrast to their relatively short stay motion below, the 25 pages of analysis in Defendants' Motion for Stay in this Court (together with 389 pages of appendices) contains all the trappings of a full merits brief, effectively seeking full merits reversal of the panel's summary judgment ruling. Few if any of these arguments were presented in Defendants' motion to stay below.

Plaintiffs submit this memorandum in opposition to Defendants' Motion for Stay in this Court. Defendants have failed to carry their burden to show that the three-judge panel's order denying their motion to stay was an abuse of discretion Further, they have failed to carry their burden to show any likelihood of success on the merits, much less to show that the balance of the equities somehow supports continued enforcement of admittedly unconstitutional laws.

RESPONSE IN OPPOSITION

I. Standard of Review.

Under Tennessee Rule of Civil Procedure, 62.03, the determination whether to grant a stay pending appeal is in the discretion of a trial court. When a party seeks review of a trial court's denial of a stay under Rule 62.03, the appellate standard is for a "review" of that discretionary determination by the trial court. Under Tennessee Rule Appellate Procedure 7(a), "[a]ny party may obtain review of an order entered pursuant to Rule 62 of the Tennessee Rules of Civil Procedure…."

The standard of appellate review of a trial court order denying a stay on appeal is the abuse of discretion standard. *Sanjines v. Ortwein & Associates, P.C.*, 984 S.W.2d 907, 909 (Tenn. 1998) ("plaintiff … challenges the denial of his motion to stay. Thus, our review is not under the *de novo* standard prescribed for application in summary judgment cases. Instead, questions of stay … are matters entrusted to the sound discretion of the trial judge. An appellate court cannot interfere with the trial court's decision unless such decision constitutes an abuse of discretion and causes prejudice to the party seeking the stay or continuance.") (citations omitted); *Open Lake Sporting Club v.*

Lauderdale Haywood Angling Club, 511 S.W.3d 494, 505 (Tenn. Ct. App. 2015) ("A trial court's decision concerning a request to stay enforcement of an order is subject to an abuse of discretion standard of review."); *Law Offices of T. Robert Hill PC v. Cobb*, 2021 WL 2172981, at *4 (Tenn. Ct. App. May 27, 2021) ("Finally, as to … the motion for stay of case pending appeal, we review those decisions under an abuse of discretion standard."); *Tavino v. Tavino*, 2014 WL 5430014, at *13 (Tenn. Ct. App. Oct. 27, 2014). Thus, this review of the panel's discretionary ruling is subject to the abuse of discretion standard.

Defendants incorrectly assert that the appropriate standard of review on its Motion to Stay is *de novo* citing *Rye v. Women's Care Center of Memphis, MPLLC*, 477 S.W.3d 235, 250 (Tenn. 2015). However, *Rye* was not decided under Rule 7(a) on review of a trial court's denial of a motion to stay, it was a full appellate review of the trial court's summary judgment ruling. *See id.* ("We review a trial court's ruling on a motion for summary judgment de novo, without a presumption of correctness."). Defendants' reliance on *Rye* at this stage is misplaced. Defendants bear the burden of demonstrating now that the panel court's thorough and

well-reasoned denial of its motion to stay was an abuse of the panel's discretion under Rule 62. Defendants have failed to carry that burden.

II. Defendants Are Unlikely to Prevail on Appeal.

A. The Court Below Had Jurisdiction.

1. This Case Does Not Involve "Criminal Jurisdiction."

Claiming that the court below "lacked jurisdiction" to issue a declaratory judgment, Defendants assert that chancery courts only have "jurisdiction 'of all **civil causes of action**'" but not "criminal actions." Mot. at 7 (emphasis original). But although Plaintiffs challenged the constitutionality of a criminal statute, they did so in *a civil cause of action*. In order to appeal, Defendants completed a "Docketing Statement for Civil Appeals." Defendants cite *no authority* for their apparent belief that this civil case did not fall squarely within the jurisdiction of the court below, as a court of general jurisdiction. *See In re D.Y.H.*, 226 S.W.3d 327, 330 (Tenn. 2007).

Next, Defendants claim that "a chancery court has no power to prevent the prosecution of criminal statutes...." Mot. at 8. But barely two weeks ago, Defendants expressly acknowledged that "neither

Defendants nor any other law enforcement officer has been commanded to cease enforcing the statutes." Motion for Stay of Judgment Pending Appeal ("Panel Mot.") at 4, App'x II, at p. 367. Indeed, the panel expressly issued *only* declaratory – not injunctive – relief (Order on the Parties' Cross-Motions for Summary Judgment ("MSJ Order") at 42, App'x II, at p. 360), after previously finding that it had no power to enjoin enforcement of the statute (Order Denying Motion for Preliminary Injunction at p. 3 (Mar. 5, 2024)). Defendants do not begin to explain their objection to the panel *not doing* what Defendants claim it cannot do.

2. The Panel Had Authority to Issue a Declaratory Judgment.

Next, Defendants claim that both "[t]he Supreme Court and this Court have … held that chancery courts lack jurisdiction to" issue declarations in certain circumstances. Mot. at 9. But each of Defendants' cases is inapposite. *Spoone v. Morristown*, 185 Tenn. 454 (1947), involved a request for declaratory and injunctive relief against an ordinance. But the Tennessee Supreme Court concluded *only* that "courts of equity have no jurisdiction to enjoin threatened criminal proceedings...." *Id.* at 458.

The Court said nothing about *declaratory* relief, as Defendants appear to believe. *See* MSJ Order at 14-16, App'x II, at pp. 332-334.

Defendants are similarly wrong that *Earhart v. Young*, 174 Tenn. 198 (1938), involved declaratory relief. Rather, "[t]he prayer of the bill is *that defendants be enjoined* from … interfering with complainant in the distribution and operation of the pinball machines...." *Id.* at 200 (emphasis added). To be sure, the defendants had "demurred … upon two grounds," including whether a "chancery court is without jurisdiction to determine whether by the operation of a particular machine, a criminal offense has been committed." *Id.* at 200. But the Supreme Court's analysis focused on the *equitable* issue, finding that "complainants [] have no standing in court of equity *with respect to injunctive relief*...." *Id.* at 202 (emphasis added). Moreover, *Earhart* is inapposite for another reason: the plaintiff there asked a chancery court to rule whether certain conduct was unlawful, and thus whether enforcement must be enjoined. *Id.* at 200. But this case does not involve the scope of the statute – Plaintiffs facially challenged its constitutionality. And *Memphis Bonding Co. v. Crim. Ct. of Tenn. 30th Dist.*, 490 S.W.3d 458 (Tenn. Ct. App. 2015), has literally nothing to do with this issue. There, this Court

found that a chancery court did not have jurisdiction to interfere with the internal operations *of a sister court*. See MSJ Order at 14, App'x II, at p. 332.

Defendants' next case, *Carter v. Slatery*, 2016 Tenn. App. LEXIS 164 (Feb. 19, 2016), examined an inmate's attempt to have a chancery court "declare" his prior criminal conviction invalid, essentially "seeking to transform the chancery court 'into a de facto Court of Criminal Appeals'...." *Id.* at *6. Although that decision discusses the question of chancery courts issuing declaratory relief about criminal statutes, surveying the various opinions on the topic, this Court's <u>*holding was narrow*</u> – concluding only that "the chancery court lacked subject matter jurisdiction to enter a declaratory judgment regarding the legality or constitutionality *of the criminal judgments* entered against Carter." *Id.* at *20 (rejecting such an "end run around the Court of Criminal Appeals' denial of his petition for habeas corpus"). *Carter* did not expressly deny chancery courts the authority to rule on a facial challenge to a state law, as the panel did below. See MSJ Order at 14 n.32, App'x II, at p. 332.

Finally, *Frazier v. Slatery*, 2021 Tenn. App. LEXIS 423 (Oct. 25, 2021), like *Carter*, involved an inmate's request for a "declaratory

judgment enjoining … enforc[ement] of his 2004 criminal convictions...." *Id.* at *2. But this Court refused to let "the chancery court proceed as a court of last resort and vacate the 2004 judgments after [Slatery] had failed to persuade the criminal court or Court of Criminal Appeals to do so." *Id.* at *14. The *Frazier* Court's holding was therefore expressly limited to a chancery court's "jurisdiction concerning the validity of criminal convictions" – in fact, this Court characterized *Carter* as having been similarly limited. *Id.* at *18.

All of Defendants' cases have one thing in common – they involve a chancery court interfering with the operation of another court. *See* MSJ Order at 14, App'x II, at p. 332. *Spoone* and *Earhart* involved enjoining criminal proceedings, while *Carter* and *Frazier* involved post-conviction attempts to undermine the judgment of the criminal courts of conviction. And *Memphis Bonding* merely involved invalidation of a sister court's local rules. None of these cases stands for the proposition that a chancery court cannot rule on a pre-enforcement facial challenge to the constitutionality of a statute, where there is no underlying criminal proceeding.

Meanwhile, Defendants concede that "[o]ne panel of this Court has" found that chancery courts *do* have declaratory jurisdiction over the constitutionality of state statutes, in *Blackwell v. Haslam*, 2012 Tenn. App. LEXIS 23 (Jan. 11, 2012). *See* Mot. at 9-10. Indeed, this Court explained in *Blackwell* that a "chancery court has subject matter jurisdiction over [an action] for declaratory relief on the constitutionality of Tennessee Code Annotated § 39-17-1307...." *Id.* at *9.[5] At bottom, each of the authorities on which Defendants rely involved an entirely different posture than this case, and one is required to read the tea leaves to find some application to this case. Meanwhile, *Blackwell* involved the precise question at issue here, and in fact involves precisely the same statute.

[5] The *Blackwell* court acknowledged (at *13-14) the Tennessee Supreme Court's holding in *Zirkle v. Kingston*, 217 Tenn. 210 (1965), which theorized that a chancery court lacks declaratory jurisdiction when it also lacks jurisdiction "under any of [plaintiffs' other] theories." *Id.* at 255. But as *Blackwell* notes, the Supreme Court in at least two other cases had allowed declaratory challenges to a criminal statute. *Id.* at *15-16 (citing *Davis-Kidd Booksellers v. McWherter*, 866 S.W.2d 520 (Tenn. 1993) and *Clinton Books, Inc. v. City of Memphis*, 197 S.W.3d 749 (Tenn. 2006)). Surely, one would think that if this Court's *Blackwell* decision got things as wrong as Defendants claim (Mot. at 9-10), the Supreme Court would have stepped in. And yet the Supreme Court declined to disturb *Blackwell*. *See* 2012 Tenn. LEXIS 263 (Apr. 11, 2012).

Defendants claim that this Court has "twice … repudiated" *Blackwell*. Mot. at 10. But again, *Memphis Bonding Co.* involved the issuance of declaratory relief against a sister court's local rules. No similar interference exists here. And, contrary to Defendants' apparent belief, *Carter* did not mention *Blackwell* at all, much less "repudiate" it.

In addition to the authorities above, another Tennessee Supreme Court decision provides additional evidence that chancery courts have authority to declare state statutes – even criminal ones – unconstitutional. In *Parlor v. Buckner*, 156 Tenn. 278 (1927), plaintiffs sought "a decree declaring unconstitutional [a statute] … and for a decree of injunction restraining the defendants from proceeding in the criminal court against complainants...." *Id.* at 279-80. The Tennessee Supreme Court concluded that, while "a person so situated is entitled to bring and maintain an action … under the provisions of the Declaratory Judgments Law … [t]his jurisdiction of the chancery court does not … include the power to issue an injunction." *Id.* at 282. That case would not have been decided as it was if Defendants' narrow view of chancery court jurisdiction was correct. See also *Pettit v. White Cty.*, 152 Tenn. 660, 662 (1925) (challenging "an act to prevent stock from running at large in

White County," where the Court found "[t]he chancellor held the act unconstitutional, and in his holding we concur.").

Not only does Defendants' jurisdictional argument fail to flow from their cited authorities, but also *another* three-judge panel has rejected it. As that panel explained in *Torch Electronics, LLC v. Mulroy*, No. CH-24-0985,[6] "[i]f [Defendants'] argument were to be accepted, Defendant[s] would have the Court in effect read Tennessee Code Annotated § 20-18-101 to say that Three-Judge Panels 'must … hear[] and determine[]' cases that challenge the constitutionality of a state statute, '*except for criminal statutes*.' It is axiomatic that 'courts must be circumspect about adding words to a statute that the General Assembly did not place there,' … and the language of the Three-Judge Panel statute cannot be squared with Defendant[s'] arguments to the contrary." MSJ Order at 15-16, App'x II, at pp. 333-34 (cleaned up, emphasis added) (quoting *Torch Electronics, LLC v. Mulroy*, No. CH-24-0985 (Tenn. Ch. Ct. Shelby Cnty. Nov. 19, 2024)). This Court similarly should decline Defendants' invitation to read words of exception into the statute here.

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6 www.tncourts.gov/sites/default/files/2025-09/Final%20Order%20%28Torch%29.pdf

3. The Three-Judge Court Had Jurisdiction to Issue a Declaratory Judgment.

Defendants next claim that nothing about the "three-judge panel statute" changes the calculus – that chancery courts still have no authority to issue declaratory relief about the constitutionality of a criminal statute. *See* Mot. at 10-13. But Defendants are wrong several times over.

First, although Defendants repeatedly refer to Section 20-18-101 as "the three-judge panel *statute*" (Mot. at 10 (emphasis added)), Section 20-18-105 refers to "a three-judge panel" as "a *court*." Likewise, Tennessee Supreme Court Rule 54 discusses "a special three-judge trial court." This indicates that a three-judge panel court was meant to be an entirely new statutory creation, distinct from other courts, with special and express jurisdiction to hear and decide certain categories of cases. Meanwhile, Section 20-18-101 deprived other courts – sitting alone – of the jurisdiction to do the same – a three-judge panel sitting as a trial court must be convened.

Second and relatedly, even if Defendants were correct (they are not) that Tennessee *chancery* courts lack the jurisdiction to issue declaratory relief with respect to criminal statutes, they provide no authority for their

claim that a three-judge panel court cannot do so. And even if each judge's original jurisdiction somehow carried with him or her to the three-judge panel, limiting the scope of each judge's authority, then it must be noted that the panel below was composed of only one chancery judge but *two circuit judges*. *See* MSJ Order at 1, App'x II, at p. 319. Thus, the chancery judge's vote was not necessary to the declaratory judgment of the court below, which was fully endorsed by two circuit judges.[7]

Third, nothing in the statute indicates that chancery court judges may not sit on a three-judge panel. Quite the opposite – Section 20-18-101 provides that such a panel shall be composed of "trial court judges of courts of record," of which a chancery court certainly counts. Indeed, the Tennessee Supreme Court has assigned numerous chancery court judges to three-judge panels.[8]

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[7] Section 20-18-101 also provides for the replacement of judges "disqualified or otherwise unable to serve on the panel." But again, even if the chancery judge below was replaced, the panel's decision would stay the same.

[8] See https://www.tncourts.gov/threejudgepanels.

Fourth, nothing in the statute limits where a qualifying action can be filed. Rather, Supreme Court Rule 54 provides that Section 20-18-101 applies to "civil actions filed in a trial court in this state" – again, chancery courts count, and numerous such actions have been originally filed in chancery court.[9] This broad designation of eligible courts seems unlikely if, as part of their panel duties, chancery court judges were not empowered to declare criminal statutes unconstitutional. Indeed, ruling on "the constitutionality of [a] state statute" is *what these panels do*. Tenn. Code Ann. § 20-18-101(a)(1)(A)(i).

Fifth, adopting Defendants' position would be to accuse the Tennessee Supreme Court of negligence – failing to recognize that the chancery court lacked jurisdiction. Indeed, the Supreme Court considered Plaintiffs' request for "declaratory and injunctive relief from the enforcement of Tenn. Code Ann. § 39-17-307 [sic] and -1311,"[10] found that the case met the criteria under Section 20-18-101, and assigned additional judges. Moreover, to adopt Defendants' argument would mean this Court would also be declaring invalid *other* three-judge panels, each

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[9] *See* https://www.tncourts.gov/threejudgepanels.

[10] https://www.tncourts.gov/special-cases/hughes-et-al-v-bill-lee-et-al.

of which was convened by the Supreme Court. For example, *Blackmon v. State* (No. 23-1196-I) was originally filed in chancery court "seek[ing] declaratory and injunctive relief from … Tennessee's criminal abortion statute" – something Defendants no doubt would claim is beyond that court's power.[11] And yet the Supreme Court convened a three-judge panel anyway, and in fact appointed a *second* chancery judge to sit on that panel. Likewise, *Little v. Lee* (No. 21-0843-II), *Woods v. Rausch* (No. 21-0018-II), and *Curd v. State* (No. 20-3727-2) each involve a post-conviction challenge to the penalty of registration on the sex offender registry, and each was originally filed in chancery court.[12]

Defendants' only response is that Section 20-18-101's use of the phrase "hear and determine" does not infuse three-judge panels with additional authority the judges do not have. Mot. at 11-13. Rather, as Defendants explain, "[w]hen the General Assembly wants to confer new jurisdiction, it says explicitly 'jurisdiction is conferred.'" Mot. at 11. But Defendants miss the forest for the trees. The *whole point* of Section 20-

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[11] https://www.tncourts.gov/special-cases/nicole-blackmon-et-al-v-state-tennessee-et-al.

[12] https://www.tncourts.gov/special-cases/little-v-lee-et-al; https://www.tncourts.gov/special-cases/woods-v-rausch-et-al; https://www.tncourts.gov/special-cases/curd-v-state-ex-rel-tbi-et-al.

18-101 is to create the three-judge panels specifically to hear, among other matters, constitutional challenges to statutes and to confer on them the jurisdiction to carry out that task. The panel rightly rejected Defendants' argument to the contrary. MSJ Order at 14-16, App'x II, at pp. 332-34.

B. The Panel Properly Framed and Applied the Standard for Facial Challenges.

Theorizing that Tennessee's criminalization of the right to bear arms might be constitutionally applied to "murders [sic], rapists, and robbers," Defendants surmise that a facial challenge could never succeed. Mot. at 18. Thus, accusing the panel of having "created [a] homebrew test," Defendants assert that the challenged statutes must be upheld "so long as there is [even] ***one*** valid application." *Id.* at 16-17 (emphasis added). Conversely, objecting to the panel's use of the "plainly legitimate sweep" standard, Defendants claim that no facial challenge can succeed unless literally every single possible application of a statute is carefully

examined and found to be unconstitutional.[13] *Id.* But that is not how the law works, and Defendants are wrong several times over.

For starters, Defendants conjure hypotheticals about fringe factual patterns, rather than focusing on *what the statute actually does*. But this "misunderstands how courts analyze facial challenges" – courts "consider[] only applications of the statute in which it actually authorizes or prohibits conduct." *City of Los Angeles v. Patel*, 576 U.S. 409, 418 (2015). And courts do not reject facial challenges "whenever a defendant can conjure up just one hypothetical factual scenario in which implementation of the state law would" be lawful. *Lozano v. City of Hazleton*, 724 F.3d 297, 313 n.22 (3d Cir. 2013). For example, Defendants focus on the carrying of firearms *by violent felons*. Mot. at 17. But the

[13] Contrary to Defendants' claim that the panel required the state "to prove the constitutionality of the statutes in all their applications" (Mot. at 14), Defendants were required only to show a "plainly legitimate sweep" – *i.e.*, something more than just fringe constitutionality in some remote hypothetical scenario they dream up. *See* Order on Defendants' Motion for Stay of Judgment at 3. Here, like in *Heller* and *Bruen*, the challenged law prevents ordinary law-abiding Americans ("the people") from doing ordinary things ("bear[ing]") with ordinary firearms ("Arms"). It is obviously unconstitutional – on its face. The fact that the laws challenged in *Heller* and *Bruen* also prevented people who constitutionally could be disarmed from owning or carrying handguns gave the Supreme Court no pause when it facially invalidated both of those statutes.

challenged statutes do not regulate felon carry – another provision of Tennessee law governs felons' access to firearms.[14] Defendants similarly posit hypotheticals about other locations, such as "polling places, schools, and government buildings." *Id.* at 18.[15] Yet the challenged Guns in Parks statute bans guns in *parks* – not schools. Again, another section of Tennessee Code does that. *See* Tenn. Code Ann. § 39-17-1309. What the challenged statutes "*actually* … prohibit" is the peaceable carry of firearms in public[16] for self-defense, by ordinary, law-abiding Americans. Yet Defendants' motion conveniently fails to discuss that *part* of the statute.

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[14] Indeed, both federal and state law independently prohibit such persons from even possessing arms. *See* 18 U.S.C. § 922(g)(1); Tenn. Code Ann. §§ 39-17-1307 (b), (c).

[15] Defendants raised a similar parade of horribles below, such as claiming that 10-year-olds will bring firearms to basketball games (Panel Mot. at 2, 5), but the panel soundly repudiated such fearmongering. Order on Defendants' Motion for Stay of Judgment at 4.

[16] Indeed, the impact of Tenn. Code Ann. § 39-17-1307(a)'s declaration that carrying a firearm with the "intent to go armed" is not limited to public carry. The affirmative defenses to -1307(a) that are set forth in Tenn. Code Ann. § 39-17-1308, which defenses are the burden of the accused to raise at trial under Tenn. Code Ann. § 39-11-203, establishes that the criminal offense set forth in -1307(a) applies not only when the person is in public but the criminal offense applies even in someone's home, private property or private business.

Naturally, the statutes' obvious effect on normal, everyday persons was the focus of the panel's opinion. Op. at 31 ("the Going Armed Statute criminalizes the entire right-to-bear-arms portion of the Second Amendment"). Meanwhile, Defendants' motion for stay entirely fails to recognize what the challenged statutes actually do. Although conceding that the statute is "problematic in some applications" (Mot. at 3, App'x I, at p. 74), Defendants nevertheless demur that a law that *facially criminalizes a constitutional right* is nevertheless salvageable on the basis of theoretical constitutional applications at its fringes – like the possibility someone might carry hand grenades in public. *Id.* at 17. But the Supreme Court has never said anything that even remotely supports the stringent standard Defendants ask this Court to adopt.[17] Rather,

[17] Defendants appear to insist on a rigid application of the Supreme Court's dictum in *United States v. Salerno*, 481 U.S. 739, 745 (1987), which said that "the challenger must establish that no set of circumstances exists under which the Act would be valid." But this cherrypicked language from *Salerno* does not accurately portray federal law. Indeed, "[w]hile some Members of the Court have criticized the *Salerno* formulation, all agree that a facial challenge must fail where the statute has a 'plainly legitimate sweep.'" *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 449 (2008); *see also City of Chicago v. Morales*, 527 U.S. 41, 55 (1999) ("To the extent we have consistently articulated a clear standard for facial challenges, it is not the *Salerno* formulation, which has never been the decisive factor in any decision of

federal law requires a plaintiff to "establish '… no set of circumstances' … ***or*** [a] 'plainly legitimate sweep.'" *United States v. Stevens*, 559 U.S. 460, 472 (2010) (emphasis added).

In fact, the Supreme Court has rejected the very sort of argument Defendants make here. In *City of Los Angeles v. Patel*, 576 U.S. 409 (2015), Los Angeles argued that there might be a few constitutional applications (like emergencies, consent, *etc*.) of its broad warrantless searches, and so no facial challenge to its ordinance could ever succeed. Rejecting that claim, the Court noted that such "logic would preclude facial relief in every Fourth Amendment challenge to a statute authorizing warrantless searches." *Id.* at 894. On the contrary, as the Court recognized, "not only [can] facial challenges … be brought, but also … they can succeed." *Id.*

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this Court, including *Salerno* itself."); *Janklow v. Planned Parenthood, Sioux Falls Clinic*, 116 S. Ct. 1582, 1583 (1996) (Stevens, J., concurring in denial of certiorari) ("the dicta in *Salerno* 'does not accurately characterize the standard for deciding facial challenges,' and 'neither accurately reflects the Court's practice with respect to facial challenges, nor is it consistent with a wide array of legal principles.' … For these reasons, *Salerno*'s rigid and unwise dictum has been properly ignored in subsequent cases.").

Nor is the panel's reasoning – and the numerous Supreme Court precedents employing the "plainly legitimate sweep" standard – the anomaly Defendants seem to believe. Recently, the Supreme Court of Pennsylvania similarly explained that "the fact that certain circumstances might avert an unconstitutional application of the statute does not insulate it from a determination of facial unconstitutionality." *Commonwealth v. Shifflett*, 335 A.3d 1158, 1176 (Pa. 2025). The Sixth Circuit agrees, explaining that facial invalidation "is the fate some laws deserve – either because the defect in the law infects *all or virtually all* of its applications … or because the constitutional problems cannot meaningfully be severed." *Connection Distrib. Co. v. Holder*, 557 F.3d 321, 335 (6th Cir. 2009). And as the Tenth Circuit puts it, "[a] facial challenge is best understood as 'a challenge to the terms of the statute, not hypothetical applications,' … and is resolved 'simply by applying the relevant constitutional test to the challenged statute without attempting to conjure up whether or not there is a hypothetical situation in which

application of the statute might be valid....'" *United States v. Sup. Ct. of N.M.*, 839 F.3d 888, 917 (10th Cir. 2016).[18]

[18] Defendants cite a number of cases they claim support a harsh and unyielding application of *Salerno*. But none gets Defendants very far. First, *Fisher v. Hargett*, 604 S.W.3d 381 (Tenn. 2020), *Lynch v. City of Jellico*, 205 S.W.3d 384 (Tenn. 2006), and *Tolley v. Att'y Gen. of Tenn.*, 402 S.W. 232 (Tenn. Ct. App. 2012), merely recite the "no set of circumstances" language without further analysis. None considers, much less rejects, the alternative "plainly legitimate sweep" standard, and none permits fringe hypotheticals to defeat a hornbook facial challenge. Second, in *LaFave v. County of Fairfax*, 2025 U.S. App. LEXIS 22076 (4th Cir. Aug. 27, 2025), the Fourth Circuit found a *wide range* of everyday constitutional applications of the challenged statute – much more than the fringe hypotheticals Defendants offer here. *See id.* at *6 ("the County operates three preschools on park property, and a third party runs a preschool program in a park. The County also 'offers drop-in daycare' at two recreation centers on park property"). Third, in several of Defendants' cases, courts found various provisions of 18 U.S.C. § 922 constitutional *as applied to the plaintiffs' own cases* – it did not repudiate facial challenges as a general matter. *See United States v. Rahimi*, 602 U.S. 680, 701 (2024); *United States v. Gordon*, 137 F.4th 1153 (10th Cir. 2025); *United States v. Ogilvie*, 2025 U.S. App. LEXIS 22662, at *1 (10th Cir. Sept. 3, 2025); *United States v. Perez-Gallan*, 125 F.4th 204 (5th Cir. 2024). Fourth, *Wolford v. Lopez*, 116 F.4th 959, 970 (9th Cir. 2024), undermines Defendants' argument, because it noted that, "to succeed on a facial challenge, Plaintiffs must show either that the law is 'unconstitutional in every conceivable application' ***or*** that the law 'seeks to prohibit such a broad range of protected conduct that it is unconstitutionally overbroad.'" *Id.* at 984 (emphasis added). In other words, *Wolford* supports Plaintiffs.

Tellingly, in *LaFave*, the Fourth Circuit contrasted the county's ban on guns in parks with "[t]he licensing regime in *Bruen* [which] required all prospective gun owners to justify their wish to own a gun, regardless of where they sought to carry the weapon. There was no application of

The standard Defendants resist is so ubiquitous in federal case law that it has been used in the Second Amendment context as well. For example, in *Antonyuk v. James*, 120 F.4th 941 (2d Cir. 2024), the Second Circuit repeatedly examined whether various firearm regulations had a "plainly legitimate sweep." *See, e.g.*, *id.* at 983. Likewise, Defendants conveniently overlook the Supreme Court's analysis in *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022), which struck down *on its face* a statute that conditioned the exercise of an enumerated right on a discretionary showing to bureaucrats – "proper cause." *Id.* at 12. No doubt, Defendants would have argued there was the potential for constitutional application of the law – such as denying a carry permit to a murderer. *See* Mot. at 18. Likewise, in *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court facially invalidated a blanket "prohibition on the possession of usable handguns in the home" (*id.* at 573), even though Defendants no doubt would claim that no ten-year-old possesses such a right (*see* Panel Mot. at 2, 5). In other words, numerous

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that regime that could satisfy the Second Amendment." *Id.* at *13. But that reasoning undermines Tennessee's Going Armed law – which permits the arrest of law-abiding gun owners "regardless of where they … carry the weapon."

Second Amendment cases sustained facial challenges even where Defendants might have thought up some fringe constitutional application.

It is therefore unsurprising that a number of Tennessee courts, including this Court, have employed the plainly legitimate sweep standard. *See, e.g.*, *State v. Burkhart*, 58 S.W.3d 694, 700 (Tenn. 2001) (citations omitted) ("[a] statute may be invalid on its face if it inhibits the exercise of [constitutional] rights and 'if the impermissible applications of the law are substantial when 'judged in relation to the statute's plainly legitimate sweep'"); *Lovelace v. City of Knoxville*, 2001 Tenn. App. LEXIS 198 (Ct. App. Mar. 27, 2001); *Frogge v. Joseph*, 2022 Tenn. App. LEXIS 240 (Ct. App. June 20, 2022).

Just recently, the Supreme Court explained that, "[t]o 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." *United States v. Hansen*, 599 U.S. 762, 770 (2023). That is precisely what the panel found below. Op. at 31 ("the Going Armed Statute criminalizes the entire right-to-*bear*-arms portion of the Second Amendment"). In response, all Defendants have to offer is

"fanciful" speculation. For example, below they claimed that, should the panel's ruling stand, then Tennessee would relive "Shiloh circa 1862" (Panel Mot. at 5, App'x II at p. 368) – in other words, 24,000 casualties in two days.[19] Unsurprisingly, Defendants offered no evidence that this sensational fearmongering has come to pass, despite the panel's decision being more than a month old.

Defendants bluster at length about the constitutional "commitment to divided government," the presumption of constitutionality, and preservation of the "democratic process." Mot. at 14-15. But the panel's decision conflicts with none of those principles. Rather, the panel merely "sa[id] what the law is," *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803), declaring the Going Armed statute to be unconstitutional, and thereby relegating Tennessee's racist, Reconstruction-era infringement to the dustbin of history. Nor did the panel break new ground and create a "homebrew test" for facial challenges, as Defendants sensationally claim. Rather, the panel simply followed the law as announced by the

[19] https://www.nps.gov/shil/learn/historyculture/shiloh-history.htm.

Supreme Court, as used by the lower federal courts, and as adopted by this Court.

And were there any lingering doubt, this Court need only reference the statute *Bruen* invalidated – and which the Supreme Court struck down on its face – which criminalized the bearing of arms subject to obtaining a permit obtained only upon a showing of "proper cause." *Bruen*, 597 U.S. at 12. Likewise here, the Going Armed statute criminalizes the bearing of arms subject to the showing of an affirmative defense at a criminal trial. Any "constitutional applications" Defendants might conjure for the Going Armed statute would have applied equally to the statute in *Bruen* – and yet the Court struck it down on its face. In other words, the panel below merely followed the Supreme Court's lead in *Bruen*. Nothing about that justifies a stay.[20]

C. The Panel Did Not Issue "Universal Relief" that Extends Beyond the Parties.

[20] Even if Defendants' facial-challenge argument held any water (and it does not), it only speaks to the scope of the relief granted below. Thus, even if this Court were to grant Defendants' motion here, the stay should be denied as to the vast majority of applications where Defendants acknowledge the statutes are, in fact, unconstitutional.

Continuing with the dramatic, Defendants hyperbolize that the panel "transgressed the limits of judicial power" by issuing a declaratory judgment that in reality constitutes a "universal remedy," which "exceeds longstanding guardrails on the exercise of judicial power." Mot. at 18-19. But for the reasons that follow, that is not the case.

For starters, the panel issued no injunctive relief, having previously found that it did not have authority to do so. Op. at 12-13. Defendants admit as much. *See* Mot. at 4 (asserting that "chancery courts have jurisdiction to declare criminal statutes unconstitutional, even though they may not enjoin their enforcement"); *see also* Motion for Stay of Judgment Pending Appeal at 4 (conceding that no one "has been commanded to cease enforcing the statutes").

Nor did the panel's declaratory judgment break new ground. Rather, the panel simply "sa[id] what the law is" (*Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803)), declaring the Going Armed statute and Parks statute to be unconstitutional. Op. at 42. Of course, it is hardly a constitutional crisis for a court to declare an unconstitutional law invalid, even broadly. Indeed, "[w]hen a facial challenge is successful, the law in question is declared to be unenforceable in all its applications, and not

just in its particular application to the party in suit." *City of Chicago v. Morales*, 527 U.S. 41, 74 (1999) (Scalia, J., dissenting). As the Tennessee Supreme Court explains, even in "an as-applied challenge, [a] court still [has authority] to award relief that extend[s] beyond the named plaintiffs." *Fisher v. Hargett*, 604 S.W.3d 381, 397 (Tenn. 2020). In other words, there is ample precedent supporting the judicial power to facially declare a law invalid.

But even so, the panel *did not* award relief beyond the named plaintiffs. Blatantly mischaracterizing the opinion below, Defendants claim the panel "extended" relief "to 'Tennesseans that are not party to this action.'" Mot. at 19. But this partial quotation grossly misstates what the panel actually said. On the contrary, the panel posited that its declaratory judgment might have the practical effect such that "Tennesseans that are not party to this action may *unintentionally benefit* from the protection of their constitutional rights...."[21] Op. at 41

[21] As the panel explained, such incidental benefits to third parties do not violate the Tennessee Declaratory Judgments Act, which "prohibits declarations that *prejudice* nonparties." Op. at 41. Nevertheless, Defendants theorize that, anytime a court grants relief to any party in any case, it first must consider every potential downstream effect of its ruling. Mot. at 21. But while those who might be "*bound by*

(emphasis added). Indeed, the panel explicitly stated that "declaratory relief [is] granted <u>*to Plaintiffs*</u>." *Id.* (emphasis added).[22]

The panel's estimation of likely downstream effects was hardly novel. Rather, even for courts of limited jurisdiction, "a declaration of unconstitutionality … may still … cut down the deterrent effect of an

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the courts' decision" should be involved in the litigation, *Huntsville Util. Dist. of Scott Cnty. v. Gen. Tr. Co.*, 839 S.W.2d 397, 403 (Tenn. Ct. App. 1992) (emphasis added), the fact that some third party might be somehow affected by a ruling is not the standard. Otherwise, when ordering a defendant debtor to pay his credit card bill, a court first would be required to join the defendant's landlord, on the theory that a judgment might result in him being unable to pay his rent. That is not the law. Indeed, as the Supreme Court recently observed, where one is sued for "blasting loud music at all hours of the night," to "afford the plaintiff complete relief, the court has only one feasible option: order the defendant to turn her music down—or better yet, off. That order will necessarily benefit the defendant's surrounding neighbors too; there is no way 'to peel off just the portion of the nuisance that harmed the plaintiff.'" *Trump v. CASA, Inc.*, 145 S. Ct. 2540, 2557 (2025). Here too, the panel's ruling for Plaintiffs no doubt will benefit others, but that is unavoidable.

[22] Defendants' citation to *Wright v. Nashville Gas & Heating Co.*, 183 Tenn. 594, 598 (1946), does not help them. Mot. at 21. In *Wright*, the Tennessee Supreme Court stated that "[t]he non-joinder of necessary parties is fatal on the question of 'justiciability' which, in a suit for a declaratory judgment, is a necessary condition of judicial relief." *Id.* at 598. But Defendants do not claim that any other party was "necessary." Indeed, Plaintiffs sued the Attorney General of Tennessee who no doubt is well aware that, "if a statute is unconstitutional on its face, the State may not enforce the statute under any circumstances." *Tenn. Dep't of Health v. Boyle*, 2002 Tenn. App. LEXIS 894, at *13 (Ct. App. Dec. 19, 2002) (citation omitted).

unconstitutional state statute. The persuasive force of the court's opinion and judgment may lead state prosecutors, courts, and legislators to reconsider their respective responsibilities toward the statute. Enforcement policies or judicial construction may be changed, or the legislature may repeal the statute and start anew." *Steffel v. Thompson*, 415 U.S. 452, 470 (1974). The panel merely echoed this principle.[23] Indeed, courts "have long presumed that officials of the Executive Branch will adhere to the law as declared by the court." *Comm. on the Judiciary of the U.S. House of Representatives v. Miers*, 542 F.3d 909, 911 (D.C. Cir. 2008); *accord Florida v. HHS*, 780 F. Supp. 2d 1307, 1315 (N.D. Fla. 2011) ("it will not be presumed that [an] officer will ignore the judgment of the

[23] This principle has recently played out in practice in Florida. In *McDaniels v. State*, 2025 Fla. App. LEXIS 6846 (1st Dist. Ct. App. Sept. 10, 2025), the Florida Court of Appeals held that Florida's ban on openly carried firearms violated the Second Amendment. Shortly after the opinion was handed down, the Florida Attorney General issued a "guidance memorandum" to "Florida's Law Enforcement Agencies and Prosecuting Authorities," explaining that "the *McDaniels* decision correctly applied Second Amendment law...." *See* https://x.com/AGJamesUthmeier/status/1967601917686636843/photo/1. Additionally, local Sheriffs also issued statements, stating that they "will no longer arrest or charge individuals … for openly carrying firearms...." https://www.facebook.com/story.php?story_fbid=1249604493869561&id=100064600662698&rdid=h0U4gp5pwvHpGCs1#. In stark contrast here, Defendant Skrmetti seeks to have this Court preserve his ability to enforce an unconstitutional statute.

Court"). Plus, even if not bound *by name*, law enforcement officials have every incentive to heed a court's declaration – not only to uphold their oath of office, but also to maintain eligibility for qualified immunity.

Next, Defendants assert that equitable relief must be limited to the named parties, and "[n]othing about declaratory relief changes the rules." Mot. at 20. On the contrary, the Supreme Court rejected a lower court's "treating the requests for injunctive and declaratory relief as a single issue." *Steffel*, 415 U.S. at 463. In fact, "the express congressional authorization of declaratory relief [is] afforded because it is a less harsh and abrasive remedy than the injunction...." *Perez v. Ledesma*, 401 U.S. 82, 104 (1971). As the Court explained, "it [is] plain that Congress anticipated that the declaratory judgment procedure would be used by the federal courts to test the constitutionality of state criminal statutes." *Id.* at 115. To that end, "[a] state statute may be declared unconstitutional in toto – that is, incapable of having constitutional applications." *Steffel*, 415 U.S. at 469. And while a declaratory judgment "may be persuasive, it is not ultimately coercive; noncompliance with it may be inappropriate, but is not contempt." *Id.* at 471. These authorities

foreclose Defendants' claim that there is no practical difference between declaratory and injunctive relief.

Defendants next assert that the Supreme Court's recent decision in *Trump v. CASA, Inc.*, 145 S. Ct. 2540, 2544 (2025), changes everything. Mot. at 19. According to Defendants, "the 'equitable tradition' has never embraced 'universal relief' beyond the parties." *Id.* But again, the panel did not extend relief "beyond the parties." Nor is declaratory relief part of the "equitable tradition" – it is statutory (not equitable) in nature. *See Gulfstream Aerospace Corp. v. Mayacamas Corp.*, 485 U.S. 271, 284 (1988) ("Actions for declaratory judgments are neither legal nor equitable...."); *see also Am. Safety Equip. Corp. v. J. P. Maguire & Co.*, 391 F.2d 821, 824 (2d Cir. 1968) ("A declaratory judgment action is a statutory creation, and by its nature is neither fish nor fowl, neither legal nor equitable."). But most importantly, *CASA* did not invalidate the notion of a facial declaratory ruling. If it had, surely the Court would have said so, because the "Court does not normally overturn, or so dramatically limit, earlier authority *sub silentio*." *Shalala v. Ill. Council on Long Term Care*, 529 U.S. 1, 18 (2000). Rather, *CASA* involved nothing more than federal courts' "equitable authority" under the

Judiciary Act of 1789 "to issue universal injunctions" for and against entities and persons who are not parties to a case. 145 S. Ct. at 2550. And again, Defendants readily concede that no injunction issued here. *CASA* is not the sweeping repudiation of courts' declaratory judgment powers Defendants believe it to be. Again, the panel's order merely declares certain provisions of Tennessee law to be unconstitutional. That is hardly unprecedented. *See Bruen*, 597 U.S. at 71 ("New York's proper-cause requirement violates the Fourteenth Amendment").

One more point bears emphasis. At bottom, Defendants' argument focuses not on the *substance* of the panel's *ruling*. Rather, Defendants focus on the *scope* of the panel's *relief*. In fact, Defendants agree <u>*on the merits*</u> that the challenged statutes are unconstitutional. Motion for Stay of Judgment Pending Appeal at 5 ("Defendants have acknowledged that there are unconstitutional applications of these statutes."); Mot. at 3 ("the State acknowledged below they are problematic in some applications—for example, the blanket prohibition on the carrying of long arms"). But that is not a showing that Defendants are "likely to succeed on the merits." *Nken v. Holder*, 556 U.S. 418, 434 (2009). Just the opposite. Moreover, even if this Court bought Defendants' arguments –

that the panel's decision had somehow "extended" relief to other parties *sub silentio* – that would only justify an order limiting relief to the named parties – including the millions of members and supporters of GOA and GOF.[24]

III. The Balance of Equities Weighs Overwhelmingly in Plaintiffs' Favor.

Finally, Defendants argue that the balance of equities "heavily favors a stay." Mot. at 22. But none of Defendants' arguments clears the starting gate.

First, Defendants assert that it "is always irreparable injury" to "keep[] the State 'from effectuating statutes'...." Mot. at 22 (citing *Thompson v. DeWine*, 976 F.3d 610, 619 (6th Cir. 2020)). But Defendants blatantly misrepresent what the Sixth Circuit said. Indeed, if Defendants' recitation *actually* were the law, then the government would be entitled to a stay as a matter of course. To the contrary, Defendants

[24] Of course, Defendants would have no idea who those persons are, and Plaintiffs are not required to say. *See NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 462 (1958) ("Compelled disclosure of membership in an organization engaged in advocacy of particular beliefs is" an "effective … restraint on freedom of association."). Thus, Defendants would be left to enforce an unconstitutional statute against some indeterminate subset of the population. In other words, the very sort of "confusion" Defendants claim they do not want. Mot. at 2, 8.

conveniently omit the Sixth Circuit's full statement, which is that irreparable injury arises "[a]ny time a State is *enjoined* by a court...." *Thompson*, 976 F.3d at 619 (emphasis added). Yet Defendants concede that *no one has been enjoined* here. *See* Panel Mot. at 4, App'x II, at Baes No: 367. Defendants also omit that the Sixth Circuit qualified its statement *in a big way*, clarifying that a state is harmed "'*[u]nless* the statute is unconstitutional'...." *Thompson*, 976 F.3d at 619 (emphasis added). Of course, that is precisely what the panel found below – the statutes in question are unconstitutional. MSJ Order at 42, App'x II, at 360.

Second, Defendants panic about imaginary purported "real-world dangers" if this Court denies them a stay. Mot. at 22. But the panel already rejected Defendants' "whataboutisms"[25] below, explaining that

[25] A "whataboutism" is a "'fallacy [that] ignores the question and switches the subject to something else.'" *United States v. Jones*, 2021 U.S. App. LEXIS 37158, at *9 n.3 (9th Cir. Dec. 16, 2021) (Baker, J., dissenting). Of course, "[w]hataboutism … is not an argument." *League of Women Voters of Fla. v. Lee*, 2022 U.S. Dist. LEXIS 37991, at *42 (N.D. Fla. Jan. 4, 2022). For all their hand-wringing, Defendants never address what they admit to be the *core application* of the statutes they continue to defend, which together effect a widespread ban on the right to bear arms. *See* MSJ Order at 31, App'x II, at p. 349 ("Defendants[] … make no defense of nor even address the constitutional infirmity at the heart

"there are numerous laws already on the books to prevent Defendants' hypotheticals" and, "[i]n any event, to the extent there is the need for further *constitutional* enactments after this Court's opinion, the General Assembly is free to act as its constituency directs at any time." Stay Order at 4, App'x II, at 386. In response, Defendants theorize that "surviving law" may not be enough – for example, that there might be no recourse for "a drunk … walking around with a shotgun" – but ***not*** "fighting" and ***not*** "refusing … 'to disperse'" and ***not*** otherwise "creating a 'hazardous' condition." Mot. at 23. But an armed person who is ***not*** creating any sort of problem is hardly the sort of public safety crisis that would weigh in favor of a stay. And again, even if additional *constitutional* laws are needed to replace Tennessee's patently *unconstitutional* ones – that does not justify keeping the *unconstitutional* laws in place.

Rather, it is axiomatic that "it is always in the public interest to prevent the violation of … constitutional rights." *G & V Lounge v. Mich. Liquor Control Comm'n*, 23 F.3d 1071, 1079 (6th Cir. 1994). Or,

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of the statute – the criminalization of the constitutional right to bear arms.").

conversely, "the public is certainly interested in the prevention of enforcement of [laws] which may be unconstitutional." *Planned Parenthood Ass'n v. City of Cincinnati*, 822 F.2d 1390, 1400 (6th Cir. 1987). In other words, the balance of the equities in favor of Plaintiffs flows naturally from the fact that the statutes they challenge are clearly unconstitutional and Defendants have repeatedly admitted that fact at least in some applications. Mot. at 24

Nor do Defendants explain how any of their parade of horribles[26] would be preventable *even with* the Going Armed and Parks statutes firmly in place. Indeed, as Justice Alito has explained, a ban on carrying firearms in no way will "prevent or deter" someone "bent on carrying out a" crime. *Bruen*, 597 U.S. at 72, (Alito, J., concurring). And for any criminal who carries a gun and hurts someone with it, that person can be

[26] Continuing with the melodramatic, Defendants hystericize that, after the panel's ruling, "[g]angs may join the voting lines at their community center toting an array of weapons." Mot. at 23. Of course, a "gang" member who is a prohibited person (*i.e.*, a felon) is already prohibited from *even possessing* a firearm by both state and federal law. Tenn. Code Ann. §§ 39-17-1307 (b), (c); 18 U.S.C. § 922(g)(1). And as for everyone else, the Going Armed statute itself included an exemption for lawful handgun carry by *anyone* who may lawfully possess a firearm – purported gang member or not. So other than shouting "gangs!" in an effort to stir panic and arouse emotion, Defendants do not explain how the panel's decision has changed anything on this front.

punished under any of the litany of other Tennessee laws prohibiting crimes like assault, discharge, robbery, murder, etc.

In fact, after the panel's ruling, the current state of the law in Tennessee is no different than in any of the 28[27] other "constitutional carry" states that do not criminalize the bearing of arms in public. The sky is not falling in any of those states, and Defendants do not offer even a credible theory of why Tennessee is any different. Indeed, the panel's decision was issued more than a month ago, and yet there have been no reports of "Shiloh circa 1862." *See* Panel Mot. at 5, App'x II, at 368.

Third, Defendants demur that "maintaining the status quo for a few more months … will not irreparably harm Plaintiffs," because there is no "'time-sensitive need'" to strike down unconstitutional "statutes [that] have been on the books for decades...."[28] Mot. at 24. But again, black-

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[27] https://www.britannica.com/procon/constitutional-carry-of-guns-debate; https://massie.house.gov/news/documentsingle.aspx?DocumentID=395664#:~:text=%E2%80%9CCurrently%2C%2029%20states%20have%20adopted,National%20Association%20for%20Gun%20Rights.

[28] For example, Defendants point to the statute "allowing permitted carry of handguns in parks." Mot. at 24. But Plaintiff Elaine Kehel does not have a permit, and so she is entirely prohibited. First Am. Compl. ¶3.

letter law says the opposite, because the loss of constitutional rights "for even minimal periods of time[] unquestionably constitutes irreparable injury...." *Elrod v. Burns*, 427 U.S. 347, 373 (1976); *see also Bruen*, 597 U.S. at 70 (majority opinion) ("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.'"). Plus, Plaintiffs face serious risk of harm if the panel judgment is stayed, including the risk of stop, detention, arrest and prosecution – not only by police but also through citizens' arrest. *See* MSJ Order at 6, App'x II, at 324. All of this comes with the possibility of armed confrontation – or worse – merely for lawfully exercising an enumerated constitutional right. If there is any "real-world danger" to be avoided, this is it.

Finally, the panel's facial invalidation of the challenged statutes was eminently correct. But even if this Court does not ultimately agree, that would in no way justify the stay that Defendants seek. Indeed, Defendants ***admit*** that the challenged statutes are not "constitutionally sound in every application." Mot. at 24. In other words, *Defendants ask this Court to endorse the admitted violation of constitutional rights*. For a court to *acknowledge* a clear constitutional violation (a violation which

the government defendant admits exists in at least some applications), and then *take affirmative action to allow* it to proceed, would be unprecedented. Defendants clearly have not thought through the implications of their sweeping request, which must be denied on this basis alone.

CONCLUSION

This Court should decline Defendants' histrionic request to reverse the panel's denial of their requested stay pending an appeal. The panel's concluded in a thorough opinion that it should not stay pending this appeal its unanimous declaration that two of Tennessee's gun control statutes are unconstitutional, a conclusion which Defendants *concede at least in some applications.* The standard of review of the panel court's denial of the requested stay requires that Defendants carry the burden of proving that the panel court abused its discretion in denying the stay motion that they presented below. Defendants did not do this.

Instead, Defendants have bypassed the analysis required for this Court to review the panel's denial of the stay. Indeed, even if this Court believed that one or more of Defendants' arguments on the merits might hold water (and they do not), Defendants' likelihood of success on the

merits is – at the very best – murky. That is not a clear showing that Defendants are *likely* to succeed on the merits. Rather, the sort of lengthy, complex, and nuanced legal arguments that Defendants raise in their emergency motion for stay are precisely the reason that courts receive briefing and hear argument on the merits during the ordinary course of litigation. Meanwhile, Defendants *admit* the challenged statutes are unconstitutional, and offer nothing to overcome the axioms that plaintiffs are *always* irreparably harmed by violations of their constitutional rights, and that the government *never* has an interest in continuing to perpetuate the same.

Neither the facts, nor the law, nor the equities is on Defendants' side. And so the carefully reasoned judgment below – reached unanimously by a randomly assigned, three-judge panel drawn from across the state – is entitled to far more than casual tossing aside, simply because Defendants "pound the table and yell like hell" (Carl Sandburg). That is no reason to impair or recriminalize Tennesseans' exercise of their constitutional rights while this appeal proceeds.

Defendants' Motion for Stay should be denied.

Respectfully submitted:

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Certificate of Service

The undersigned counsel hereby certifies that the foregoing is being filed by the Court's electronic-filing system on September 26, 2025, which is expected to deliver a copy to the following:

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