

**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,)
JONATHAN SKRMETTI,)
JEFF LONG,)
DAVID SALYERS,)
and FREDERICK AGEE,)**

Defendants-Appellants.)

**) No. W2025-01327-COA-R3-CV
) GIBSON COUNTY CHANCERY**

EMERGENCY MOTION FOR STAY PENDING APPEAL

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REQUEST FOR RELIEF

The chancery court declared two foundational criminal statutes—the Going Armed statute, Tenn. Code Ann. § 39-17-1307(a), and the Guns in Parks statute, Tenn. Code Ann. § 39-17-1311(a)—“unconstitutional, void, and of no effect.” App’x II, at 360. Defendants-Appellants appealed and now ask this Court to (1) enter an administrative stay of the chancery court’s declaration while considering this motion and (2) issue a full stay pending appeal.

INTRODUCTION

This Court should stay the chancery court’s sweeping decision. For decades, courts have “fail[ed] to protect the Second Amendment to the same extent that they protect other constitutional rights,” treating the right to bear arms as a “constitutional orphan.” *Silvester v. Becerra*, 583 U.S. 1139, 138 S. Ct. 945, 952 (2018) (Thomas, J., dissenting from the denial of certiorari). But the decision below does not cure that neglect; it overcorrects. And in so doing it undermines other bedrock principles of Tennessee’s Constitution. The chancery court failed to adhere to the stringent standard for facial challenges and struck a statute in its entirety despite admitting that the law “is constitutional in some of its applications.” *United States v. Rahimi*, 602 U.S. 680, 693 (2024) (emphasis added). The chancery court’s order thereby flouts established limitations on the judicial power and unduly impairs the lawful authority of the people’s elected representatives to legislate application of the police power. The decision has sowed confusion and undermined public safety. This Court needs to intervene and stay the lower court decision pending appellate review.

BACKGROUND

Plaintiffs—three gun owners and two firearms-rights organizations—claim two of Tennessee’s criminal statutes are facially unconstitutional under article I, section 26 of the Tennessee Constitution. App’x II, at 323-27. The Going Armed statute prohibits carrying a firearm “with the intent to go armed,” Tenn. Code Ann. § 39-17-1307(a), which the Tennessee Supreme Court has held means carrying with “offensive or defensive intent,” *Kendall v. State*, 101 S.W.

189, 189 (Tenn. 1907). Its definition of firearm encompasses “[a]ny weapon” that “expel[s] a projectile by the action of an explosive,” including bombs, grenades, rockets, and missiles. Tenn. Code Ann. §§ 39-11-106(a)(10), -106(a)(13)(A). Against that baseline prohibition, the General Assembly adopted substantial exceptions. For example, the law does not prohibit activities like permitless carry of handguns or possessing firearms in vehicles and boats. Tenn. Code Ann. § 39-17-1307(e), (g). And other statutes make clear that Tennesseans can carry with a permit, carry at one’s property or incident to lawful sporting activity, protect livestock, and engage in self-defense. Tenn. Code Ann. §§ 39-17-1308(a), -1322(a).

The Guns in Parks statute prohibits carrying certain weapons with the intent to go armed in public parks, playgrounds, civic centers, and government-owned recreational property. Tenn. Code Ann. § 39-17-1311(a). But it allows carry of handguns with a permit so long as one is not in the immediate vicinity of a school event on an athletic field. Tenn. Code Ann. § 39-17-1311(b)(1)(H). And it allows carry of any firearm while lawfully hunting, while traversing park property to reach hunting land, while attending a gun-and-knife show, while picking up passengers, or while sport or target shooting. Tenn. Code Ann. § 39-17-1311(b)(1)(J).

These are some of the most gun-friendly laws in American history. App’x I, at 165; App’x II, at 200. Even so, the State acknowledged below they are problematic in some applications—for example, the blanket prohibition on the carrying of long arms. App’x I, at 74. But Plaintiffs’ challenges were not limited to those specific applications. Over two

years ago, they sued Defendants-Appellants Governor Lee, Attorney General Skrmetti, Commissioner Long, Commissioner Salyers, and District Attorney General Agee¹ in Gibson County Chancery Court seeking facial invalidation of the statutes. App'x II, at 319.

In their motion for summary judgment, Plaintiffs argued that *Bruen*, applied through Tennessee's Constitution, rendered both the Going Armed and Guns in Parks statutes facially unconstitutional. App'x I, at 5-7. They thus sought a declaration that the statutes are void in all applications. *Id.*

Focusing on the facial nature of Plaintiffs' claims, Defendants countered that the statutes were constitutional in at least some applications that had already been recognized by the U.S. Supreme Court: to grenades and bombs, to polling places and schools, to those who terrorize the public, and to those without permits. App'x I, at 69-86. Defendants also argued that the chancery court lacked jurisdiction to declare the constitutionality of criminal laws. App'x I, at 96-99. And they argued Plaintiffs' request for universal relief exceeded the chancery court's authority under the Declaratory Judgments Act. App'x I, at 99-102.

On August 22, 2025, the chancery court granted Plaintiffs the universal declaration they sought. On jurisdiction, it found that chancery courts have jurisdiction to declare criminal statutes unconstitutional, even though they may not enjoin their enforcement. App'x II, at 330-34. On the merits, the chancery court applied a new

¹ Sheriff Paul Thomas was a party below, but he did not participate in the case, and he has not joined this appeal.

“flipped burden” test and held the statutes facially unconstitutional, ignoring *Rahimi*’s governing standard. App’x II, at 335-58. On a remedy, the chancery court issued “a declaratory invalidation of statutory text” and applied it universally to non-parties. App’x II, at 358-59.

On September 10, 2025, the chancery court denied a stay. App’x II, at 383-87. Defendants now seek a stay from this Court.

STANDARD OF REVIEW

“Any party may obtain review” of the denial of a stay pending appeal. Tenn. R. App. P. 7(a). An appellate court may suspend or modify relief or “make any order appropriate to preserve the status quo” during the pendency of an appeal. Tenn. R. Civ. P. 62.08; Tenn. R. App. P 7 Adv. Comm’n Cmt. (“This rule should be construed in connection with Tennessee Rule of Civil Procedure 62.08.”). In exercising that discretion, courts consider “(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.” *Nken v. Holder*, 556 U.S. 418, 434 (2009); see *In re Conservatorship of Malone*, 691 S.W.3d 365, 371 (Tenn. 2024) (citing *Nken*). This Court’s review is “de novo, without a presumption of correctness.” *Rye v. Women’s Care Center of Memphis, MPLLC*, 477 S.W.3d 235, 250 (Tenn. 2015). Thus, this Court must “make a fresh determination” whether Plaintiffs are entitled to a declaration wiping two statutes from the code. *Id.*

REASONS FOR GRANTING A STAY

The chancery court erred at every step of this case: jurisdiction, merits, and remedies. Each error is an independent basis to reverse its erasure of two criminal statutes. Together, they are a substantial departure from the fundamental constitutional limits of Tennessee courts, threatening the strict separation of powers at the heart of Tennessee’s constitution. As a result of that overreach, the chancery court’s blue-pencil of Tennessee law has left gaps in Tennessee’s regulation of firearms. Its ruling has created confusion and unnecessary risk for both law enforcement and the public. This Court should issue a stay.

I. The State Will Likely Prevail in This Appeal.

The chancery court assumed extraordinary power to issue universal relief facially invalidating two laws. Longstanding and simple rules prohibit that. *First*, chancery courts have no jurisdiction over criminal statutes. That rule dates back to pre-Founding England, and nothing about the Declaratory Judgments Act or the three-judge-panel statute has altered it. *Second*, Tennessee courts do not hold statutes facially unconstitutional unless “no set of circumstances exists under which the Act would be valid.” *Lynch v. City of Jellico*, 205 S.W.3d 384, 390 (Tenn. 2006); *see also United States v. Rahimi*, 602 U.S. 680, 144 S. Ct. 1889, 1898 (2024) (same). That rule protects our separation of powers, and it is no different in gun-rights cases, as the U.S. Supreme Court reiterated just last year. And *third*, Tennessee courts cannot decide disputes between parties not before them. That rule is fundamental to the judicial power, and it applies even more

strictly to declaratory judgments. The court erred by granting universal relief to nonparties against nonparties.

A. The chancery court lacked jurisdiction to declare the constitutionality of criminal statutes.

Subject matter jurisdiction “is a threshold inquiry.” *Johnson v. Hopkins*, 432 S.W.3d 840, 844 (Tenn. 2013). It “confines judicial power to the boundaries drawn in constitutional and statutory provisions.” *Turner v. Turner*, 473 S.W.3d 257, 270 (Tenn. 2015). Because the chancery court lacked subject matter jurisdiction, this Court must reverse its declaration on appeal.

1. Chancery courts have no criminal jurisdiction.

In Tennessee, the jurisdiction of trial courts is determined by the General Assembly. Tenn. Const. art. VI, §§ 1, 8. “The several Constitutions adopted by this State have all” drawn distinctions between chancery and circuit courts. *J.W. Kelly & Co. v. Conner*, 123 S.W. 622, 627 (Tenn. 1909). And the General Assembly has maintained “the constitutional and historical distinctions between chancery court and circuit court” when assigning their jurisdictions. Tenn. Code Ann. § 16-2-501. A chancery court is “a court of equity,” Tenn. Code Ann. § 16-11-101, with jurisdiction “of all **civil causes of action**” except for certain actions for unliquidated damages, Tenn. Code Ann. § 16-11-102(a) (emphasis added). Meanwhile, the circuit and criminal courts have “exclusive jurisdiction” of criminal actions. Tenn. Code Ann. § 16-10-102.

The Supreme Court has strictly policed these distinctions. Over a century ago, the Court cemented “the rule of almost universal

application” that a chancery court has no power to prevent the prosecution of criminal statutes. *J.W. Kelly & Co.*, 123 S.W. at 627-29 (collecting authorities). Courts recognized “for centuries” the “insuperable objections to the exercise of any restraining power whatever in equity over the course of criminal proceedings.” *Id.* at 628. “Courts of equity . . . have no jurisdiction to give relief in criminal cases.” *Id.* The judgment of criminal laws “must be left to take its own course in the courts ordained to administer those laws, unhindered by the courts of equity.” *Id.* at 629.

That rule has good reason beyond the text of the jurisdictional statutes. “Permitting a court of equity to interfere with the administration of this state’s criminal laws, which that court is without jurisdiction to enforce, would cause confusion in the preservation of peace and order and the enforcement of the State’s general police power.” *Clinton Books, Inc. v. City of Memphis*, 197 S.W.3d 749, 752 (Tenn. 2006).

That rule ends this case.

2. Neither the Declaratory Judgments Act nor the three-judge-panel statute confer special jurisdiction on chancery courts.

The chancery court claimed that the Declaratory Judgment Act and the Three-Judge Panel statute override the traditional divide between civil and criminal courts. That is wrong.

Declaratory Judgment Act: That Plaintiffs sued for declaratory relief did not confer on the chancery court “an independent basis for jurisdiction.” *Memphis Bonding Co., Inc. v. Crim. Ct. of Tennessee 30th*

Dist., 490 S.W.3d 458, 466 (Tenn. Ct. App. 2015). The declaratory judgment provides a *remedy*, not a cause of action, *Elvis Presley Enters., Inc. v. City of Memphis*, No. W2019-00299-COA-R3-CV, 2022 WL 854860, at *7 (Tenn. Ct. App. Mar. 23, 2022). So a chancery court may only declare the right of a party if it “originally could have entertained a suit of the same subject matter,” *Zirkle v. City of Kingston*, 396 S.W.2d 356, 363 (Tenn. 1965). If a case is not within a court’s “respective jurisdiction[],” it has no “power to declare rights.” Tenn. Code Ann. § 29-14-102(a).

The Supreme Court and this Court have thus held that chancery courts lack jurisdiction to declare:

- a criminal ordinance void, *Spoone v. Mayor & Aldermen of Town of Morristown*, 206 S.W.2d 422, 423-24 (Tenn. 1947);
- the application of gaming-device laws to pinball machines, *Earhart v. Young*, 124 S.W.2d 693, 694 (Tenn. 1939);
- a criminal court rule unconstitutional, *Memphis Bonding Co.*, 490 S.W.3d at 465;
- a criminal judgment unconstitutional, *Carter v. Slatery*, No. M2015-00554-COA-R3-CV, 2016 WL 1268110, at *5-7 (Tenn. Ct. App. Feb. 19, 2016); and
- a criminal judgment unenforceable, *Frazier v. Slatery*, No. E2020-01216-C, 2021 WL 4945235, at *4-6 (Tenn. Ct. App. Oct. 25, 2021).

Had the chancery court applied the same rule here, it never could have reached the merits.

One panel of this Court has deviated from that centuries-old rule, in an unpublished opinion. *Blackwell v. Haslam*, No. M2011-00588-COA-R3-CV, 2012 WL 113655, at *3-6 (Tenn. Ct. App. Jan. 11, 2012).

That panel presumed that the Supreme Court, by neglecting to *sua sponte* dismiss two declaratory judgment actions brought in chancery challenging criminal laws, “clearly departed from the unequivocal” rule that declaratory relief is only proper where the chancery court could have entertained a suit of the same subject matter. *Id.* at *5-6.

But this Court has repudiated that deviation twice since—correctly recognizing that it “should not assume that subject matter jurisdiction existed based on the fact that the issue was not addressed.” *Memphis Bonding Co.*, 490 S.W.3d at 467; *Carter*, 2016 WL 1268110, at *7. At a minimum, the published decision in *Memphis Bonding Co.* “shall be considered controlling authority for all purposes unless and until such opinion is reversed or modified by a court of competent jurisdiction.” Tenn. Sup. Ct. R. 4(G)(2); *see also Barger v. Brock*, 535 S.W.2d 337, 341 (Tenn. 1976) (“It is a controlling principle that inferior courts must abide the orders, decrees, and precedents of higher courts.”). The chancery court erred by ignoring that controlling authority. App’x II, at 332-33.

Three-Judge Panel Statute: A chancery court is a chancery court—full stop. The three-judge-panel statute does not address jurisdiction. And courts presume that new laws “change pre-existing law only to the extent expressly declared.” *Johnson v. Hopkins*, 432 S.W.3d 840, 848 (Tenn. 2013). With no express statement, the chancery court should have respected the centuries-old boundaries of equity jurisdiction.

Ignoring this settled principle of statutory interpretation, the panel below seized upon § 20-18-101(a)(1)'s command to “hear and determine” the case as a basis for assuming jurisdiction. In other words, the chancery court believed that the three judge panel statute bypasses all usual limitations on a court's authority to skip to the merits. App'x II, at 333-34. Under the chancery court's reading, so long as a suit is brought under the three-judge panel statute, a plaintiff need not demonstrate subject matter jurisdiction, personal jurisdiction, service, standing, venue, or anything else other than the merits.

That is wrong from start to finish.

First, the chancery court's interpretation can be easily rejected because it does not accord with the words' “natural and ordinary meaning” in context and “leads to absurd results.” *State v. Curry*, 705 S.W.3d 176, 184 (Tenn. 2025). The ordinary use of “hear and determine” describes what judge presiding over a case does—not the bounds of his power. *See* Tenn. Code Ann. § 17-2-112 (permitting a circuit judge to “hear and determine [a] cause as a chancellor” when the chancellor is incompetent); *Id.* § 42-2-219 (requiring an agency to “hear and determine” an application “within a reasonable length of time”); *see also* Tenn. Code Ann. §§ 9-8-305, 29-5-206, 54-12-109, 54-12-211. When the General Assembly wants to confer new jurisdiction, it says explicitly “jurisdiction is conferred.” *See, e.g.*, Tenn. Code Ann. §§ 53-14-113, 62-13-109, 62-19-127, 62-36-119 63-3-211, 63-31-111, 63-17-119, 68-11-1612; *see also* Tenn. Code Ann. §§ 16-10-104 (using the word “jurisdiction”), 16-10-105 (same). Indeed, even this Court is authorized

to “hear and determine cases” in panels of “three (3) judges each.” Tenn. Code Ann. § 16-4-113. This Court has never interpreted that language to override limits on its jurisdiction. *See, e.g., Schuette v. Johnson*, 337 S.W.3d 767, 769 (Tenn. Ct. App. 2010); *In re Estate of Boykin*, 295 S.W.3d 632, 635-36 (Tenn. Ct. App. 2008); *Dishmon v. Shelby State Community College*, 15 S.W.3d 477, 480, 482 (Tenn. Ct. App. 1999).

The ordinary meaning of “hear and determine” simply reflects the “obvious proposition” that “[a] court has jurisdiction to determine its own jurisdiction.” *New v. Dumitrache*, 604 S.W.3d 1, 20 (Tenn. 2020) (cleaned up). In this case, the court should have heard plaintiffs’ claims but then determined that it lacked subject matter jurisdiction.

Second, the chancery court’s interpretation of “hear and determine” conflicts with a neighboring statutory provision. The General Assembly went out of its way to say that assigning three judges to a court does not “create a cause of action independent of existing Tennessee or federal law.” Tenn. Code Ann. § 20-18-103(a). Read “in the context of the entire statutory scheme,” it is clear “hear and determine” carries no extraordinary meaning to upset the existing jurisdiction of chancery courts. *City of Knoxville v. Netflix, Inc.*, 656 S.W.3d 106, 110 (Tenn. 2022).

Third, nothing in the text of Tenn. Code Ann. § 20-18-101 creates one neat trick to override all other valid jurisdictional restraints. “[N]ew statutes,” like the three-judge-panel statute, “change pre-existing law only to the extent expressly declared.” *Johnson*, 432

S.W.3d at 848. And “repeals by implication are disfavored.” *Id.* Because the three-judge-panel statute is silent about altering background jurisdictional rules, courts should presume that the statute leaves those rules undisturbed. Simply put, the three-judge-panel statute does not grant chancery courts jurisdiction over criminal matters that they otherwise would not have.

* * *

“Courts of equity are not constituted to deal with crime and criminal proceedings.” *J.W. Kelly & Co.*, 123 S.W. at 635. The General Assembly “has vested exclusive and original jurisdiction” of those matters in the circuit and criminal courts. *Tennessee Downs, Inc. v. William L. Gibbons*, 15 S.W.3d 843, 848 (Tenn. Ct. App. 1999). As this case demonstrates, *see infra*, Part ##, the exercise of criminal jurisdiction by a chancery court tends to “greatly confuse and embarrass the enforcement of the police power.” *J.W. Kelly & Co.*, 123 S.W. at 635. Our constitutional system demands that the validity of criminal laws be tested by those “making their defenses in” the circuit and criminal courts, and state officials are presumed to avoid “vexatious” prosecutions and oppression. *Id.* at 636. Notwithstanding “the public interest in the proper construction of the statute[s] in question, the importance of it to many citizens of the state, and the rest and quietude that a final decision of it would bring,” this Court “must take” the course of reversing the chancery court and dismissing the case. *Id.* at 637. In light of that predictable end, a stay pending this appeal is warranted.

B. The chancery court ignored the standard for facial challenges when it flipped the burden on the merits.

On the merits, the chancery court failed to apply the governing standard for facial challenges. Plaintiffs brought only a facial challenge to the Going Armed and Guns in Parks statutes. App'x II, at 321. Settled precedent requires an extraordinary showing from Plaintiffs: that “there are no circumstances under which the statute, as written, may be found valid.” *Fisher v. Hargett*, 604 S.W.3d 381, 396-97 (Tenn. 2020). But the chancery court created a new test that requires the State to prove the constitutionality of the statutes in all their applications. App'x II, at 345. That upends decades of Tennessee Supreme Court authority and ignores the recent U.S. Supreme Court decision in *Rahimi* recognizing the governing standard. It is not likely to survive on appeal.

Tennessee courts make plaintiffs clear an exceedingly high bar before declaring a statute unconstitutional “on its face.” In such a challenge, “the plaintiff contends that there are no circumstances under which the statute, as written, may be found valid.” *Fisher v. Hargett*, 604 S.W.3d 381, 396-97 (Tenn. 2020). That makes it “the most difficult challenge to mount successfully.” *Lynch v. City of Jellico*, 205 S.W.3d 384, 390 (Tenn. 2006).

That standard is more than just the unambiguous command of the Tennessee Supreme Court. It is grounded in the Tennessee constitution’s commitment to divided government. Our constitution separates the powers of government “into three distinct departments.” Tenn. Const. art. II, § 1. No member of one department “shall exercise

any of the powers properly belonging to either of the others.” Tenn. Const. art. II, § 2. So Tennessee courts “must be controlled by the fact that our Legislature may enact any law which our Constitution does not prohibit.” *Holly v. City of Elizabethton*, 241 S.W.2d 1001, 1004 (Tenn. 1951). That means courts “begin with the presumption that an act of the General Assembly is constitutional” and “indulge every presumption and resolve every doubt in favor of the statute’s constitutionality.” *Gallaher v. Elam*, 104 S.W.3d 455, 459 (Tenn. 2003). In short, “[t]he Court must uphold the constitutionality of a statute wherever possible.” *Willeford v. Klepper*, 597 S.W.3d 454, 465 (Tenn. 2020).

Because facial challenges tempt the judiciary to pick up the pen of the legislature, the high bar for those challenges protects divided government. “[F]acial challenges threaten to short circuit the democratic process by preventing laws embodying the will of the people from being implemented consistent with the Constitution.” *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 451 (2008). So the presumption of constitutionality “applies with even greater force when the facial constitutional validity of a statute is challenged.” *Gallaher*, 104 S.W.3d at 459. Because holding a statute facially invalid “frustrates the intent of the elected representatives of the people,” *Wash. State Grange*, 552 U.S. at 451, plaintiffs “undertake an especially heavy legal burden” to convince a court to do so.

The same principles, and therefore the same test, apply in this suit about the right to keep and bear arms. Just last year, the U.S. Supreme Court held that “to prevail” in a facial challenge rooted in the

Second Amendment, “the Government need only demonstrate that [the statute] is constitutional in some of its applications.” *United States v. Rahimi*, 602 U.S. 680, 693 (2024). That is the same test Tennessee courts regularly deploy for facial challenges. *Lynch*, 205 S.W.3d at 390. And it is the test federal courts have implemented without difficulty in gun-rights cases since *Rahimi*. See, e.g., *United States v. Ogilvie*, ___ F.4th ___, 2025 WL 2525579, at *2 (10th Cir. Sep. 3, 2025) (holding plaintiff’s “facial challenge fails so long as the government shows that [the statute] is constitutional in some of its applications”); *LaFave v. County of Fairfax, Va.*, ___ F.4th ___, 2025 WL 2458491, at *4 (4th Cir. Aug. 27, 2025) (holding it is “enough for us to reject the facial challenge to the parks restriction” that there are preschools on park property); *United States v. Gordon*, 137 F.4th 1153, 1158 (10th Cir. 2025) (holding challengers “utterly fail” in their facial challenge when their own case involved a constitutional application of a statute disarming those subject to a domestic-violence protective order); *United States v. Perez-Gallan*, 125 F.4th 204, 214 (5th Cir. 2024) (holding defendant’s “facial challenge still fails because the provision is not inconsistent with the Second Amendment in *all* its applications”); *Wolford v. Lopez*, 116 F.4th 959, 984 (9th Cir. 2024) (applying *Rahimi*’s facial challenge standard to a prohibition on firearms in parks).

Ignoring all this precedent, the chancery court “flipped” the normal burdens. Rather than uphold statutes so long as there is one valid application, it required Defendants to “demonstrate a plainly legitimate sweep of the statute[s] as well as at least one constitutional

application.” App’x II, at 345. The trial court created this homebrew test by confusing and compounding various tests and burdens snipped from disparate precedent, much of which was inapposite.

The chancery court’s “synthesizing,” App’x II, at 385, was wrong, but it was also a needless endeavor. If *Bruen* had left any doubt about the standard for facial challenges in gun-rights litigation—and it did not—*Rahimi* clearly resolved it by reiterating the traditional test. The chancery court ignored *Rahimi*, citing it only twice: once to a concurrence and once in a string-cite to a block-quote discussing the role of analogy in the sensitive places doctrine. App’x II, at 351-52, 358. When given the chance to correct its error and stay its decision, the chancery court doubled down. App’x II, at 384-85. But once again, it completely ignored *Rahimi*, which had already demonstrated the appropriate standard for adjudicating a facial challenge rooted in the Second Amendment.

Because the Court of Appeals will apply the correct test to this facial challenge, the State is likely to prevail in this appeal. Plaintiffs did not “rule out every potentially valid application.” *L.W. v. Skrmetti*, 83 F.4th 460, 489 (6th Cir. 2023), *aff’d by United States v. Skrmetti*, 605 U.S. ___, 145 S. Ct. 1816 (2025). A few examples are fatal to Plaintiffs’ challenge:

- Both statutes can be constitutionally applied to prevent people from walking around with grenades, bombs, and machine guns because there is a “historical tradition” of prohibiting dangerous and unusual weapons. *Bruen*, 597 U.S. at 21; App’x I, at 71-72, 77.

- Both statutes can also be constitutionally applied to prohibit entering polling places, schools, and government buildings armed because there is a “longstanding” historical tradition of prohibiting firearms in those sensitive places. *Bruen*, 597 U.S. at 30; App’x I, at 72-73, 84-86.
- Both can constitutionally be applied to those menace the public by going armed “offensively” because there is ample tradition of prohibiting “bearing arms in a way that spreads fear or terror among the people.” *Bruen*, 597 U.S. at 50; App’x I, at 74-77.
- The Going Armed statute constitutionally disarms murders, rapists, and robbers because there is a long tradition of disarming “groups of people, like felons, whom the legislature believes to be dangerous.” *United States v. Williams*, 113 F.4th 637, 663 (6th Cir. 2024); App’x I, at 73-74.
- And the Guns in Parks statute constitutionally requires a permit for handgun carry in parks because Tennessee has a “shall-issue” licensing system with narrow and objective standards. *Bruen*, 597 U.S. at 13, n. 1, 38 n.9; App’x, I, at 77-80.

Those are but some of the “potentially valid” applications. And they come directly from U.S. Supreme Court precedent; Plaintiffs cannot show this Court “that no set of circumstances exists under which the statute would be valid.” *Tolley v. Attorney General of Tennessee*, 402 S.W.3d 232, 235 (Tenn. Ct. App. 2012). The decision below is likely to be reversed on appeal because it ignores this settled authority.

C. The chancery court transgressed the limits of judicial power.

Exercising jurisdiction it did not have and wielding its newly invented test, the chancery court went one step further. The court left

no doubt—“we do not limit the scope of declaratory relief”—that its declaration of two statutes “unconstitutional, void, and of no effect” extended to “Tennesseans that are not party to this action.” App’x II, at 359-60. That universal remedy exceeds longstanding guardrails on the exercise of judicial power.

As the U.S. Supreme Court reiterated in a landmark case just months ago, the “equitable tradition” has never embraced “universal relief” beyond the parties. *Trump v. CASA, Inc.*, 606 U.S. 831, 145 S. Ct. 2540, 2557 (2025). A valid remedy “ordinarily ‘operate[s] with respect to specific parties,’” not on “legal rules in the abstract.” *California v. Texas*, 593 U.S. 659, 672 (2021) (quoting *Murphy v. Nat’l Collegiate Athletic Ass’n*, 584 U.S. 453, 489 (2018) (Thomas, J., concurring)). And any remedy “must be tailored to redress the plaintiff’s particular injury.” *Gill v. Whitford*, 585 U.S. 48, 73 (2018); *L. W. v. Skrmetti*, 83 F.4th 460, 490 (6th Cir. 2023). This “general rule that remedies should be tailored to the injury suffered from” applies even when the alleged injury results from a “constitutional violation,” *Harris v. State*, 875 S.W.2d 662, 666 (Tenn. 1994), and even when a plaintiff alleges facial invalidity, *L.W.*, 83 F.4th at 470, 491-92. Relief in facial constitutional challenges must operate in “a party-specific and injury-focused manner” like in any other case. *Id.* at 490.

That accords with the traditional limits on Tennessee courts’ authority. Because chancellors and judges must not exercise the legislative authority, Tenn. Const. art. II, § 2, they stick to giving remedies for injuries suffered by particular parties. *Harris*, 875 S.W.

662, 666 (Tenn. 1994). In the High Court of Chancery in England—from which Tennessee chancery courts inherit their limits, *J.W. Kelly & Co.*, 123 S.W. at 627—the “Chancellor’s remedies were also typically party specific,” *CASA, Inc.*, 145 S. Ct. at 2551. These “party-specific principles that permeate our understanding of equity,” *id.* at 2552, dictate that declaratory relief not “directly interfere with enforcement of contested statutes” except as to “particular” plaintiffs, *Doran v. Salem Inn, Inc.*, 422 U.S. 922, 931 (1975).

Nothing about declaratory relief changes the rules. Declaratory relief is available only to “resol[ve]” an actual controversy by the “settling of some dispute which affects the behavior of the defendant towards the plaintiff.” *Hewitt v. Helms*, 482 U.S. 755, 761 (1987) (emphasis omitted); see *State v. Brown & Williamson Tobacco Corp.*, 18 S.W.3d 186, 193 (Tenn. 2000). It is no shortcut to judgment “upon a state of facts which has not arisen, nor upon a matter which is speculative, future, contingent, or uncertain.” *Jared v. Fitzgerald*, 195 S.W.2d 1, 689 (Tenn. 1946) (Neil, J., concurring) (quoting *Anderson on Declaratory Judgments*, § 61, p. 174). “[A] favorable declaratory judgment . . . cannot make even an unconstitutional statute disappear,” *Steffel v. Thompson*, 415 U.S. 452, 469 (1974), because it is not the job of a court to “rewrite, amend, or strike down statutes,” *Lindebaum v. Realgy, LLC*, 13 F.4th 524, 526 (6th Cir. 2021). The court can only declare the rights of the litigants before it. *CASA, Inc.*, 145 S. Ct. at 2552 (citing *Gregory v. Stetson*, 133 U.S. 579, 586 (1890)).

That is why the Declaratory Judgments Act is littered with references to particular parties. A “*person . . . whose rights . . . are affected*” may seek a declaration. Tenn. Code Ann. § 29-14-103. The Act demands that those who desire relief be named plaintiffs: “all persons shall be made parties who have or claim any interest which would be affected by the declaration.” Tenn. Code Ann. § 29-14-107. And it demands that all those from whom relief is sought be made defendants: “no declaration shall prejudice the rights of persons not parties to the proceedings.” Tenn. Code Ann. § 29-14-107.

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

Ignoring all of this, the chancery court entered a cosmically wide remedy. The chancery court purported to issue “a declaratory invalidation of statutory text.” App’x II, at 359. It declined to limit the benefit of its declaration “to only [the] handful of citizens” actually before it. *Id.* Though only a few State officials were defendants, the chancery left “[n]o government official” untouched by its judgment. *Id.* And when asked to stay its order and clarify that it did not purport to

bind non-parties, the chancery court doubled down on its supposed authority to declare universally that the challenged statutes are “not law at all.” App’x II, at 385.

Because this court will apply Tennessee and U.S. Supreme Court precedent on appeal, the State will likely succeed on appeal. A stay is warranted.

II. The Equities and Public Interest Favor a Stay.

Beyond the State’s likelihood of success, this Court must also balance the harm to the State absent a stay, the harm to the Plaintiffs of a stay, and the public interest. *Nken*, 556 U.S. at 426. That balance heavily favors a stay.

Start with the risks of denying a stay. Of course, keeping the State “from effectuating statutes enacted by representatives of its people” is always irreparable injury. *Thompson v. DeWine*, 976 F.3d 610, 619 (6th Cir. 2020). And that has real-world dangers here. Without a stay, gaps in the General Assembly’s design to protect the public will remain until this case is decided on full briefing and argument.

For example, if the Guns in Parks and Going Armed statutes are “void, and of no effect,” there is no law in Tennessee against children bringing semi-automatic rifles to a pickup basketball game at their community center. Surviving law only prevents children from possessing *handguns* without supervision and adults from giving firearms to minors for purposes other than “lawful sporting activity.” Tenn. Code Ann. §§ 39-17-1303(b), -1319(b).

Another example: if the statutes are “void, and of no effect,” there is no Tennessee law against a drunk wandering with his shotgun down Broadway in Nashville, or through Shelby Farms in Memphis, or across Market Square in Knoxville. Surviving law only prohibits possessing a handgun while under the influence or carrying a firearm while drinking in a public establishment serving alcohol. Tenn. Code Ann. § 39-17-1321. And sure, Tennessee law also prohibits “fighting,” refusing “to obey an official order to disperse,” and creating a “hazardous” condition “with intent to cause public annoyance or alarm.” Tenn. Code Ann. § 39-17-305. But Plaintiffs would no doubt agree that walking around with a shotgun is not a crime under that statute, making it an imperfect tool at best to prevent the armed-and-drunk from wandering the streets.

Under the chancery court’s declaration, there is no Tennessee law against a fan wearing a bandolier of (federally-licensed) grenades to the little league baseball game at a local park. Gangs may join the voting lines at their community center toting an array of weapons. Plaintiffs may again point to other laws that could be stretched to deter or prevent some of these extremes, but that proves the point. If Plaintiffs agree that certain conduct can and should be prohibited, and the General Assembly enacted laws that prohibit it, those laws should not be erased in their entirety by a court.

The list of examples goes on. And the risks are real. They are the sort that require careful attention and deliberation from the General Assembly. Without a stay, the chancery court’s universal erasure of the

General Assembly’s careful calculations of risk puts Tennesseans in danger.

And if a stay is granted? Life continues for Tennesseans as it has for the last two years of this litigation and for the decades before it that these laws have been on the books. Plaintiffs’ belief in their arguments on the merits—without any evidence of “a time-sensitive need”—does not justify a dramatic alteration of the status quo that obtained until three weeks ago. *Delaware State Sportsmen’s Assoc., Inc. v. Delaware Dep’t of Safety and Homeland Security*, 108 F.4th 194, 202, 205 (3d Cir. 2024). The central texts of the Going Armed and Guns in Parks statutes have been on the books for decades, *see* 1990 Tenn. Pub. Acts, c. 1029, § 6; 1989 Tenn. Pub. Acts, c. 591, § 1, with the General Assembly continually expanding permissible firearm carry over that span, *see* 2021 Tenn. Pub. Acts, c. 108, § 1 (allowing permitless carry of handguns); 2015 Tenn. Pub. Acts, c. 250, § 1 (allowing permitted carry of handguns in parks). Maintaining that status quo for a few more months while this appeal proceeds will not irreparably harm Plaintiffs.

Do not read what is not written: a stay of the chancery court’s judgment is not a ruling that these statutes are constitutionally sound in every application. But the chancery court’s sweeping decision was wrong and endangers the public. The duty to amend, overhaul, or repeal these statutes lies with the General Assembly. If, in the meantime, any enforcement of those laws should occur in a manner inconsistent with the federal or state constitutions, the judiciary is well-equipped to vindicate the rights of affected Tennesseans. The chancery

court's usurpation of the legislative authority should be stayed pending appeal.

CONCLUSION

The Court should grant an administrative stay during briefing and consideration of this motion and ultimately grant a stay pending appeal.

Respectfully submitted,

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