

**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

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

**John I. Harris III (#012099)
Schulman, LeRoy & Bennett PC
3310 West End Avenue, Suite 460
Nashville, Tennessee 37203
(615) 244 6670
jharris@slblawfirm.com**

Counsel for Appellees

ORAL ARGUMENT REQUESTED

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	iv
QUESTIONS PRESENTED	1
INTRODUCTION.....	2
STATEMENT OF THE CASE AND FACTS	5
STANDARD OF REVIEW.....	11
ARGUMENT	12
I. THE PANEL HAD JURISDICTION TO DECLARE THE CHALLENGED STATUTES UNCONSTITUTIONAL.....	15
A. The Panel Had Inherent Jurisdiction.....	16
B. The Panel Had Statutory Jurisdiction	24
1. The Declaratory Judgment Act	24
2. The Three-Judge Panel Statute	27
II. THE PANEL PROPERLY GRANTED SUMMARY JUDGMENT TO PLAINTIFFS	32
A. Defendants Misstate the Standard for Facial Challenges and Invite Absurd Results	32
B. The Going Armed Statute Is Facially Unconstitutional	44
1. “Dangerous and Unusual Weapons.”	47
2. Carrying Offensively.....	50
C. The Parks Statute Is Facially Unconstitutional	53

1. Non-Permit Holders..... 54

2. “Sensitive Places” 60

 a. Public Parks 61

 b. Polling Centers..... 66

 c. Recreational Areas for Children 67

III. THE PANEL PROPERLY GRANTED DECLARATORY
RELIEF 68

 A. The Panel Did Not Issue “Universal Relief” 69

 B. The Panel’s Judgment Complies with the Declaratory
 Judgment Act 73

CONCLUSION..... 76

TABLE OF AUTHORITIES

U.S. Constitution

Amendment I.....	<i>passim</i>
Amendment II	<i>passim</i>
Amendment IV	<i>passim</i>
Amendment XIV	14, 39

State Constitution

Article I, Section 26	<i>passim</i>
N.C. Constitution, Art. I, § 30.....	18
Tenn. Const. art. I, § 26.....	1, 2, 10, 51

Cases

<i>Accord Corum v. Univ. of N.C.</i> , 413 S.E.2d 276 (N.C. 1992).....	18
<i>Am. Safety Equip. Corp. v. J. P. Maguire & Co.</i> , 391 F.2d 821 (2d Cir. 1968).....	72
<i>Americans for Prosperity Found. v. Bonta</i> , 594 U. S. 595 (2021).....	38
<i>Andrews v. State</i> , 50 Tenn. 165 (1871)	12, 18
<i>Antonyuk v. Chiumento</i> , 89 F.4th 271 (2d Cir. 2023).....	63
<i>Antonyuk v. James</i> , 120 F.4th 941 (2d Cir. 2024)	39, 40
<i>Baird v. Bonta</i> , 163 F.4th 723 (9th Cir. 2026).....	41
<i>Bd. of Airport Comm’rs v. Jews for Jesus</i> , 482 U.S. 569 (1987)	43, 47
<i>Benjamin v. Oliver</i> , 800 F. Supp. 3d 1314 (N.D. Ga. 2025).....	71
<i>Benson v. United States</i> , No. 23-CF-0514 (D.C. March 5, 2026).....	34
<i>Blackwell v. Haslam</i> , 2012 Tenn. App. LEXIS 23 (Tenn. Ct. App. Jan. 11, 2012)	8, 26, 27
<i>Bridges v. California</i> , 314 U.S. 252 (1941)	47
<i>Carralero v. Bonta</i> , 125 F.4th 1246 (9th Cir. 2025).....	64
<i>Carter v. Slatery</i> , 2016 Tenn. App. LEXIS 164 (Tenn. Ct. App. Feb. 19, 2016)	21, 22, 23, 26
<i>City of Chicago v. Morales</i> , 527 U.S. 41 (1999).....	37, 46, 70
<i>City of Los Angeles v. Patel</i> , 576 U.S. 409 (2015)	<i>passim</i>
<i>Clinton Books, Inc. v. City of Memphis</i> , 197 S.W.3d 749 (Tenn. 2006).....	26
<i>Commonwealth v. Donnell</i> , 2023 Mass. Super. LEXIS 666 (Mass. Super. Ct. Aug. 3, 2023)	56
<i>Crawford v. Marion Cnty. Election Bd.</i> , 553 U.S. 181 (2008)	39
<i>Davis-Kidd Booksellers v. McWherter</i> , 866 S.W.2d 520 (Tenn. 1993)....	26
<i>District of Columbia v. Heller</i> , 554 U.S. 570 (2008)	<i>passim</i>

<i>Doe v. City of Albuquerque</i> , 667 F.3d 1111 (10th Cir. 2012)	37
<i>Earhart v. Young</i> , 174 Tenn. 198 (1938).....	20, 23
<i>Edwards v. Allen</i> , 216 S.W.3d 278 (Tenn. 2007)	70
<i>Espinoza v. Mont. Dep’t of Revenue</i> , 591 U.S. 464 (2020)	63
<i>FemHealth USA, Inc. v. City of Mount Juliet</i> , 458 F. Supp. 3d 777 (M.D. Tenn. 2020).....	75
<i>Frazier v. Slatery</i> , 2021 Tenn. App. LEXIS 423 (Oct. 25, 2021)	22, 23
<i>Frogge v. Joseph</i> , 2022 Tenn. App. LEXIS 240 (Tenn. Ct. App. June 20, 2022)	44
<i>Gamble v. United States</i> , 587 U.S. 678 (2019).....	63
<i>Gehl Corp. v. Johnson</i> , 991 S.W.2d 246 (Tenn. Ct. App. 1998).....	11
<i>Gulfstream Aerospace Corp. v. Mayacamas Corp.</i> , 485 U.S. 271 (1988)	72
<i>Hardaway v. Nigrelli</i> , 639 F. Supp. 3d 422 (W.D.N.Y. 2022)	63
<i>Harrel v. Raoul</i> , 144 S. Ct. 2491 (2024).....	49
<i>In re Estate of Greenamyre</i> , 219 S.W.3d 877 (Tenn. Ct. App. 2005)	32
<i>J.W. Kelly & Co. v. Conner</i> , 123 S.W. 622 (Tenn. 1909).....	<i>passim</i>
<i>Kendall v. State</i> , 118 Tenn. 156 (1906).....	5
<i>LaFave v. County of Fairfax</i> , 149 F.4th 476 (4th Cir. 2025)	42
<i>Leech v. Am. Booksellers Ass’n</i> , 582 S.W.2d 738 (Tenn. 1979).....	23, 74
<i>Lovelace v. City of Knoxville</i> , 2001 Tenn. App. LEXIS 198 (Tenn. Ct. App. Mar. 27, 2001)	44
<i>Loving v. Virginia</i> , 388 U.S. 1 (1967).....	42
<i>Lozano v. City of Hazleton</i> , 724 F.3d 297 (3d Cir. 2013)	36
<i>Lynch v. Donnelly</i> , 465 U.S. 668 (1984)	63
<i>Marbury v. Madison</i> , 5 U.S. 137 (1803).....	4, 70
<i>Memphis Bonding Co. v. Crim. Ct. of Tenn. 30th Dist.</i> , 490 S.W.3d 458 (Tenn. Ct. App. 2015).....	21, 23, 26
<i>Mont. Med. Ass’n v. Knudsen</i> , 119 F.4th 618 (9th Cir. 2024).....	37
<i>Moody v. NetChoice, LLC</i> , 603 U.S. 707 (2024).....	38, 39, 40
<i>N.Y. State Rifle & Pistol Ass’n v. Bruen</i> , 597 U.S. 1 (2022)	<i>passim</i>
<i>Nat’l Educ. Ass’n-N.H. v. N.H. Att’y Gen.</i> , 2025 U.S. Dist. LEXIS 195238 (D.N.H. Oct. 2, 2025)	72
<i>NRA v. Bondi</i> , 133 F.4th 1108 (11th Cir. 2025)	39
<i>Ortega v. Grisham</i> , 148 F.4th 1134 (10th Cir. 2025).....	56
<i>Parlor v. Buckner</i> , 156 Tenn. 278 (1927)	25
<i>Pavek v. Simon</i> , 467 F. Supp. 3d 718 (D. Minn. 2020)	75
<i>Perez v. Ledesma</i> , 401 U.S. 82 (1971)	71

<i>Pettit v. White County</i> , 152 Tenn. 660 (1925)	25
<i>Phillips v. State</i> , No. 23-1196-I (Tenn. Ch. Ct., Davidson Cnty.).....	29
<i>Ramos v. Louisiana</i> , 590 U.S. 83 (2020)	63
<i>Sepulveda v. Tenn. Bd. of Parole</i> , 582 S.W.3d 270 (Tenn. Ct. App. 2018)	11
<i>Shuttlesworth v. Birmingham</i> , 394 U.S. 147 (1969).....	55
<i>Sonnier v. Crain</i> , 613 F.3d 436 (5th Cir. 2010)	37
<i>Spoone v. Mayor & Aldermen of Town of Morristown</i> , 206 S.W.2d 422 (Tenn. 1947)	19, 20, 23
<i>State v. Booker</i> , 656 S.W.3d 49 (Tenn. 2022)	4
<i>State v. Burkhardt</i> , 58 S.W.3d 694 (Tenn. 2001).....	44
<i>Steffel v. Thompson</i> , 415 U.S. 452 (1974)	71
<i>Tenn. Dep’t of Health v. Boyle</i> , 2002 Tenn. App. LEXIS 894 (Tenn. Ct. App. Dec. 19, 2002)	75
<i>Tennesseans for Sensible Election L. v. Tenn. Bureau of Ethics & Campaign Fin.</i> , 2019 Tenn. App. LEXIS 588 (Tenn. Ct. App. Dec. 12, 2019)	70, 74
<i>Timbs v. Indiana</i> , 586 U.S. 146 (2019)	63
<i>Torch Electronics, LLC v. Mulroy</i> , No. CH-24-0985 (Tenn. Ch. Ct., Shelby Cnty. Nov. 19, 2024).....	27
<i>Trump v. CASA, Inc.</i> , 606 U.S. 831 (2025)	<i>passim</i>
<i>United States v. Ayala</i> , 711 F. Supp. 3d 1333 (M.D. Fla. 2024).....	57, 61
<i>United States v. Booker</i> , 644 F.3d 12 (1st Cir. 2011).....	4, 39
<i>United States v. Canada</i> , 123 F.4th 159 (4th Cir. 2024).....	39
<i>United States v. Decastro</i> , 682 F.3d 160 (2d Cir. 2012).....	39
<i>United States v. Hansen</i> , 599 U.S. 762 (2023)	40
<i>United States v. Miller</i> , 307 U.S. 174 (1939)	49, 50
<i>United States v. Ogilvie</i> , 153 F.4th 1098 (10th Cir. 2025)	42
<i>United States v. Perez-Gallan</i> , 125 F.4th 204 (5th Cir. 2024).....	42
<i>United States v. Rahimi</i> , 602 U.S. 680 (2024)	<i>passim</i>
<i>United States v. Salerno</i> , 481 U.S. 739 (1987).....	36, 37, 38, 40
<i>Virginia v. Moore</i> , 553 U.S. 164 (2008)	63
<i>Wash. State Grange v. Wash. State Republican Party</i> , 552 U.S. 44250 (2008)	35, 38
<i>Wolford v. Lopez</i> , 116 F.4th 959 (9th Cir. 2024).....	42
<i>Zirkle v. City of Kingston</i> , 396 S.W.2d 356 (Tenn. 1965)	24
Statutes	
18 U.S.C. § 922	42

Nev. Rev. Stat. § 202.366(3).....	56
Tenn. Code Ann. § 16-11-102.....	16
Tenn. Code Ann. § 20-18-101.....	29, 30
Tenn. Code Ann. § 20-18-101(a)(1).....	<i>passim</i>
Tenn. Code Ann. § 20-18-105.....	30
Tenn. Code Ann. § 29-14-101 <i>et seq</i>	<i>passim</i>
Tenn. Code Ann. § 39-11-202.....	6
Tenn. Code Ann. § 39-11-203.....	6
Tenn. Code Ann. § 39-13-102.....	52
Tenn. Code Ann. § 39-17-1302.....	50
Tenn. Code Ann. § 39-17-1307(a).....	<i>passim</i>
Tenn. Code Ann. § 39-17-1307(g).....	6
Tenn. Code Ann. § 39-17-1308(a).....	6
Tenn. Code Ann. § 39-17-1311(a).....	<i>passim</i>
Tenn. Code Ann. § 39-17-1311(b)(1)(H)(i).....	7

Other Authorities

<i>Allyson Phillips, et al. v. State of Tennessee, et al.</i> , <u>Tennessee Courts</u>	29
Anne Beamish, <i>Before Parks: Public Landscapes in Seventeenth- and Eighteenth-Century Boston, New York, and Philadelphia</i> , 40 <i>Landscape J.</i> 1 (2021).....	65
Antonin Scalia & Bryan A. Garner, <u>Reading Law: The Interpretation of Legal Texts</u> (2012).....	28
<i>Boston Common, Nat’l Park Serv.</i> , (Jan. 16, 2025).....	65
Brittney Baird, <i>21-Year-Old Driver Charged with Brandishing Gun on I-24, WKRN</i> (June 13, 2023).....	52
<i>Children Stabbed in France No Longer in Life-Threatening Condition, Suspect Charged, PBS News</i> (June 10, 2023).....	68
<i>Duane Park Origins, Hist. Marker Database</i>	65
Margaret Walls, <i>Parks and Recreation in the United States: Local Park Systems, Resources for the Future</i> (June 2009).....	64
Oral Argument, <i>Md. Shall Issue, Inc. v. Moore</i> , No. 21-2017 (4th Cir. Mar. 10, 2023).....	60
<i>Parks, Encyclopedia Americana</i> (1919).....	64
<i>Special Three-Judge Panels, Tennessee Courts</i>	29, 32
<i>The Earliest New York City Parks, NYC Parks</i>	65
Turpin Bannister, <i>Oglethorpe’s Sources for the Savannah Plan</i> , 20 <i>J. of Soc’y of Arch. Hist.</i> 47, 48 (1961).....	66

William Blackstone, Commentaries on the Laws of England
(John Taylor Coleridge ed., 1825) 49

Rules

Tenn. Sup. Ct. R. 54 7, 28, 29, 31

QUESTIONS PRESENTED

- I. Did the three-judge panel court lack jurisdiction to declare Tenn. Code Ann. §§ 39-17-1307(a) (the “Going Armed Statute”) and 39-17-1311(a) (the “Parks Statute”) violative of the Tennessee Constitution?
- II. Did the three-judge panel court err by declaring the Going Armed and Parks Statutes facially unconstitutional under Tenn. Const. art. I, § 26?
- III. Did the three-judge panel court err in the scope of its grant of declaratory relief?

INTRODUCTION

This case concerns a state constitutional challenge to two Tennessee gun control laws. The first – Tenn. Code Ann. § 39-17-1307(a) (the “Going Armed Statute”) – broadly prohibits the carrying of a firearm – even within one’s own home – “with the intent to go armed,” thereby criminalizing the constitutional right to “keep and bear arms” by default, and transmuting it to an affirmative defense to that criminal charge. The second – Tenn. Code Ann. § 39-17-1311(a) (the “Parks Statute”) – generally prohibits carrying a firearm in parks and other “public recreational buildings and grounds,” inherently ordinary and nonsensitive places where the Framers never would have prohibited firearms. These statutes allow law enforcement to stop, detain, question, arrest, and criminally prosecute individuals for no reason other than *because* they exercised their enumerated right to bear arms. Although statutory exceptions exist, they are affirmative defenses only, meaning they do not bar prosecution at the outset. In Tennessee, the carrying of a firearm *anywhere* is a crime *by default*. Every. Single. Time.

This statutory scheme contravenes Tennessee Constitution, Article I, Section 26. Like the Second Amendment, Article I, Section 26 provides

“[t]hat the citizens of this State have a right to keep and to bear arms for their common defense....” This unequivocal text prohibits Defendants from criminalizing the carry of firearms, and history confirms what the text plainly states. Indeed, the Tennessee Supreme Court has explained that there is no daylight between Article I, Section 26 and the federal Second Amendment.

Consistent with the plain text and uniform history, a specially convened three-judge panel court (the “Panel”) declared the challenged statutes facially unconstitutional in a thorough and reasoned opinion. Defendants now appeal on three grounds. First, they attack the Panel’s jurisdiction, even though the Tennessee Supreme Court itself considered Plaintiffs’ pleadings and appointed the Panel to decide the case. Second, Defendants cleave to fringe hypotheticals to uphold the facial constitutionality of their atextual and ahistorical regime – an approach that no governing precedent has endorsed, and which the overwhelming weight of authority rejects. Third, Defendants assert that the Panel issued “universal” declaratory relief, despite the ruling’s express language to the contrary.

Yet Defendants concede that, following *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022), the challenged statutes are not just “convoluted,” but are in large part *unconstitutional*. Brief of Appellants (“App.Br.”) at 16, 13 (“some applications of Tennessee’s [firearm] regulatory system are constitutionally problematic”); *see also id.* at 28 (challenged statutes “have their flaws”). Even so, Defendants characterize this appeal as ultimately being “about whose job it is to correct the shortcomings of Tennessee’s firearms laws...” *Id.* at 14. As Defendants would have it, “correct[ing] the shortcomings that *Bruen* has revealed ‘is a question for the *legislature*, and not the courts.’” *Id.* (emphasis added). Thus, Defendants believe “the political process” is the only vehicle for protecting Tennesseans from a facially unconstitutional gun control regime. *Id.* at 15.

Not so. Tennessee does not have a bipartite system of government, and it is “emphatically the province and duty of the judicial department to say what the law is.” *Marbury v. Madison*, 5 U.S. 137, 177 (1803). Tennessee courts have a “duty ... to apply the law and, when necessary, decide whether a law is constitutional.” *State v. Booker*, 656 S.W.3d 49, 67 (Tenn. 2022).

This Court should affirm the Panel’s decision and vindicate the right of Tennesseans to public and private carry.

STATEMENT OF THE CASE AND FACTS

On February 16, 2023, Stephen Hughes, Duncan O’Mara, Elaine Kehel, Gun Owners of America, Inc., and Gun Owners Foundation (“Plaintiffs”) filed this lawsuit challenging the constitutionality of the Going Armed and Parks Statutes under Article I, Section 26 of the Tennessee Constitution. (I, 1-21.) Plaintiffs sought declaratory and injunctive relief. (I, 22-23.)

The Going Armed Statute provides that “[a] person commits an offense who carries, with the intent to go armed, a firearm or a club.” Tenn. Code Ann. § 39-17-1307(a)(1). Tennessee courts interpret the statute’s “intent” element to mean the carrying of weapons for “purposes either offensive or defensive” – *i.e.*, all firearm possession. *Kendall v. State*, 118 Tenn. 156, 159 (1906) (emphasis added). This prohibition applies not only in public but also on private property – even within one’s own home. And, although the statute features a number of “exception[s]” and “defense[s],” they are no bar against arrest or prosecution. Tenn.

Code Ann. §§ 39-17-1307(g), 39-17-1308(a). Thus, individuals – even in their own homes – may be stopped, detained, questioned, arrested, and criminally prosecuted under the Going Armed Statute. Such individuals bear the burden at trial to show that their conduct satisfied one or more statutory defenses or exceptions. *See id.* §§ 39-11-202, 39-11-203.

The Parks Statute makes bearing arms doubly unlawful, providing that:

It is an offense for any person to possess or carry, whether openly or concealed, with the intent to go armed, any weapon prohibited by § 39-17-1302 (a), not used solely for instructional, display or sanctioned ceremonial purposes, in or on the grounds of any public park, playground, civic center or other building facility, area or property owned, used or operated by any municipal, county or state government, or instrumentality thereof, for recreational purposes. [Tenn. Code Ann. § 39-17-1311(a)].

The Parks Statute also contains a number of affirmative defenses, such as for handgun permit holders (but not for permitless carry¹) in some (but not all) areas covered by the statute. *See* Tenn. Code Ann. § 39-

¹ Tennessee is a ‘permitless carry’ jurisdiction where “individuals [may] carry handguns in public within the State without any permit whatsoever.” *Bruen*, 597 U.S. at 13 n.1. However, Tennessee is not a true ‘constitutional carry’ state because the challenged statutes criminalize the bearing of arms by default, subject to statutory affirmative defenses.

17-1311(b)(1)(H)(i). These exceptions do not bar arrest or prosecution. Thus, individuals may be stopped, detained, questioned, arrested, and criminally prosecuted for violating the Parks Statute, with the burden on them to later present an affirmative defense.

Because Plaintiffs filed a “civil action” that (1) “[c]hallenge[d] the constitutionality of ... state statute[s],” (2) “[i]nclude[d] a claim for declaratory judgment or injunctive relief,” and (3) was “brought against ... a state official acting in their official capacity,” state law required that Plaintiffs’ action “be heard and determined by a three-judge panel” selected by the Tennessee Supreme Court. Tenn. Code Ann. § 20-18-101(a)(1) (the “Three-Judge Panel Statute”); *see also* Tenn. Sup. Ct. R. 54 (“Rule for Special Three-Judge Panels”). Pursuant to that statute and Rule 54, Plaintiffs noticed the presiding judge on February 21, 2023. (I, 59-62.) The presiding judge issued a determination that Plaintiffs’ action required empaneling a three-judge panel, “understand[ing], however, that the ultimate decision ... rest[ed] with the Justices of the Tennessee Supreme Court.” (I, 88.) The Tennessee Supreme Court affirmed this determination, “[u]pon due consideration” of Plaintiffs’ filings, and

designated a three-judge panel to “hear[] and determine[]” Plaintiffs’ challenge. (I, 91.)

Consisting of one circuit, one criminal, and one chancery court judge, the Panel denied Plaintiffs’ motion for preliminary injunctive relief on March 5, 2024, reasoning that “[a] Tennessee chancery court ... has no power to enjoin the enforcement of criminal statutes,” and that the Three-Judge Panel Statute did not abrogate that general rule. (IV, 453.) However, citing this Court’s decision in *Blackwell v. Haslam*, 2012 Tenn. App. LEXIS 23 (Tenn. Ct. App. Jan. 11, 2012), the Panel concluded that it could “enter a final ruling on [Plaintiffs’] claim for declaratory relief.” (IV, 456.) Accordingly, the parties filed cross-motions for summary judgment on Plaintiffs’ claim for declaratory relief. (IV, 471-509, 518-45; V, 546-663; VI, 664-816; VII, 817-39.)

On August 22, 2025, the Panel unanimously granted Plaintiffs’ motion for summary judgment. (VII, 846-89.) The Panel rejected Defendants’ argument that chancery courts lack jurisdiction to declare the constitutionality of criminal statutes, finding “[t]he cases cited by Defendants” distinguishable. (VII, 859.) Moreover, the Panel explained that, if Defendants’ jurisdictional theory “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.*’” (VII, 861 (emphasis added).) Because courts “must be circumspect about adding words to a statute,” the Panel found Defendants’ jurisdictional theory untenable. *Id.*

Next, the Panel explained that governing Second Amendment methodology “presumed” Plaintiffs’ proposed course of conduct “to be constitutionally protected,” and the challenged statutes to be “*unconstitutional....*” (VII, 872.) Thus, “the burden l[ay] with Defendants to ... establish[] th[e] prohibition[s] of the described conduct f[ell] within our nation’s historical tradition.” *Id.* Given Plaintiffs’ facial challenge, the Panel concluded Defendants had to “demonstrate a plainly legitimate sweep of the statute as well as at least one constitutional application of the statute.” *Id.*

Turning to the Going Armed Statute, the Panel observed that, despite the statute’s passing similarity to historical “going armed” laws, the statute in fact “means something quite different....” (VII, 874.) Rather than reaching only the abusive carrying of arms “in a way that

spreads ‘fear’ or ‘terror’ among the people,” the statute has been judicially interpreted and enforced to “criminalize an intent to carry for the purpose ... of being armed and ready for offensive or defensive action...” (VII, 874, 875-76 (cleaned up).) In other words, “the Going Armed Statute criminalizes the entire right-to-*bear-arms* portion of the Second Amendment” and Article I, Section 26. (VII, 876.) And, because no historical analogue ever “proscrib[ed] *in toto*, subject to narrow exceptions ... the right to bear arms,” the Panel declared the Going Armed Statute facially unconstitutional. *Id.*

The Parks Statute shared the same fate. Despite observing that the so-called “sensitive places doctrine permits the government to constitutionally prohibit ... firearms” in certain locations, the Panel compared the recreational areas at issue to the “school[s], legislative assembl[ies], polling place[s], or courthouse[s]” previously discussed in *dicta* in the Supreme Court’s Second Amendment decisions. (VII, 878, 880.) As the Panel explained, such locations differed in a key respect: unlike the areas covered by the Parks Statute, legislative assemblies, polling places, and courthouses all house “essential functions of a republican government....” (VII, 881.) Moreover, not one of the Parks

Statute’s locations was “sufficiently similar to a school...” (VII, 883.) Indeed, “parents are not compelled by the state to leave their children ... in government custody” in recreational areas, as “[a]ttendance ... is voluntary, and parents may continue to watch over their children.” *Id.* Accordingly, the Panel found the Parks Statute to be ahistorical and declared it facially unconstitutional. (VII, 885.)

Finally, the Panel addressed Defendants’ argument against issuance of “statewide” declaratory relief. (VII, 885.) Because the challenged statutes were facially unconstitutional, the Panel simply declared them unconstitutional, granting relief “to Plaintiffs.” Any benefit to nonparties was incidental. *Id.*

STANDARD OF REVIEW

A “determination of whether subject matter jurisdiction exists is a question of law,” subject to a de novo standard of review. *Sepulveda v. Tenn. Bd. of Parole*, 582 S.W.3d 270, 273 (Tenn. Ct. App. 2018). This Court likewise reviews an “order granting summary judgment” de novo. *Gehl Corp. v. Johnson*, 991 S.W.2d 246, 248 (Tenn. Ct. App. 1998).

Defendants do not dispute that the Second Amendment framework, articulated by the Supreme Court in *Bruen*, applies to challenges under Article I, Section 26 of the Tennessee Constitution. Both provisions protect “the same rights, and for similar reasons....” *Andrews v. State*, 50 Tenn. 165, 177 (1871). Under that framework, “when the ... plain text” of Article I, Section 26 “covers an individual’s conduct, the Constitution presumptively protects that conduct,” and laws regulating that conduct are presumptively unconstitutional. *Bruen*, 597 U.S. at 17.

ARGUMENT

Taking the ‘see what sticks’ approach to this appeal, Defendants make a series of eyebrow-raising arguments in defense of the challenged statutes. None is persuasive.

First, Defendants attack the Panel’s jurisdiction. Noting that chancery courts only have jurisdiction over civil cases, but not criminal ones, Defendants ignore that, while this case involves a constitutional challenge to a criminal statute, it undoubtedly is a *civil case* involving a *civil right*. Defendants’ cases do not help. Each (i) focused on equitable authority, not declaratory authority or (ii) involved a chancery court

interfering directly with the operations of a sister court. Meanwhile, Defendants ignore that the Tennessee Supreme Court has affirmed a declaration of invalidity issued by a chancery court.

Second, Defendants dispute that the Declaratory Judgment Act (Tenn. Code Ann. § 29-14-101 *et seq*) allows chancery courts to declare statutes unconstitutional. But they ignore numerous courts that have found just that – including this Court, when considering the very statute at issue here.

Third, Defendants assert that the Three-Judge Panel Statute did not alter the jurisdictional rules. On the contrary, that statute obviously *removed* jurisdiction from *all* trial courts – none may alone decide the constitutionality of state law in a civil case – and *placed* it squarely in a new “court” staffed by a panel of three trial judges. Further, the Supreme Court already approved the jurisdiction below and appointed the Panel to decide this case.

Fourth, Defendants concede the broad unconstitutionality of the Going Armed Statute. Yet, they claim it cannot be declared facially invalid based on their conjuring of fringe hypotheticals like openly carried missiles or small children bringing AR-15s to basketball games.

Defendants assert that, because the challenged statutes might have one or two theoretical constitutional applications, this Court should overlook their otherwise admitted unconstitutionality. But the Framers never intended the Second Amendment (or Article I, Section 26) to be merely an affirmative *defense* to a criminal charge. Moreover, Defendants’ limitless logic would preclude *all* facial challenges. And it already has been rejected by courts at every level, which have facially invalidated countless laws despite theoretical constitutional applications.

Defendants demur that those decisions – applying standards like “overbreadth” or “plainly legitimate sweep” – exist only in “the First Amendment context.” Except for Supreme Court decisions in Fourth and Fourteenth Amendment cases, of course. And Second Amendment decisions in numerous federal circuits. And district court decisions too numerous to count. And a number of Tennessee courts as well.

Perhaps most tellingly, *Bruen* facially invalidated a nearly complete ban on bearing arms, despite there obviously being potential constitutional applications. Yet here, Defendants ask this Court to uphold their complete ban on bearing arms – because “missiles.” This

Court would have to depart from the four corners of *Bruen* to give Defendants the result they seek.

The same is true for the Parks Statute. *Bruen* directs courts to analogize to Founding-era locations assumed to be “sensitive.” The Panel below did just that and found that parks and recreational areas are disanalogous. Even so, Defendants claim the statute is facially constitutional because *licensing* is constitutional, and because the legislature could ban all firearms in all parks if it wanted to. But Defendants misunderstand *Bruen*, and the Founding-era record refutes their theory.

In a last-ditch attempt to reverse the Panel’s decision, Defendants claim the Panel issued “universal relief.” Far from it – the Panel granted a facial declaration to Plaintiffs. Any benefits to nonparties are incidental, not to mention perfectly permissible under the Declaratory Judgment Act and judicial precedents.

I. THE PANEL HAD JURISDICTION TO DECLARE THE CHALLENGED STATUTES UNCONSTITUTIONAL.

Defendants claim that “[c]hancery courts ... have no criminal jurisdiction whatsoever,” and “that ends this case” at the threshold. App.Br.28. To that end, Defendants attack the Panel’s jurisdiction on

two grounds: *first*, that the Panel lacked “inherent,” common-law chancery jurisdiction to declare a criminal statute unconstitutional, and *second*, that the Panel likewise lacked “statutory” jurisdiction under the Declaratory Judgment Act and Three-Judge Panel Statute. App.Br.29, 32. Defendants’ argument fails on both fronts. The Panel was well within its inherent *and* statutory authority to declare the statutes unconstitutional. This Court should affirm on either ground, or both.

A. The Panel Had Inherent Jurisdiction.

To begin, Defendants contrast chancery courts with the other types of trial courts in Tennessee. Chancery courts, Defendants explain, may hear nearly “all civil causes of action,” and such courts have “concurrent jurisdiction” with circuit courts “in *civil* cases....” App.Br.29 (citing Tenn. Code Ann. § 16-11-102). In contrast, Defendants claim that “circuit courts and criminal courts have ‘exclusive original jurisdiction’ in *criminal* cases.” App.Br.29-30 (citing Tenn. Code Ann. § 16-10-102).²

² Apparently, Defendants would dispute even *these* courts’ ability to declare gun control laws facially unconstitutional. Defendants complain that “the chancery court deprived the General Assembly ... the opportunity to address the deficiencies of Tennessee’s firearms statutes while preserving important safety measures.” App.Br.14. But that objection would apply with equal force to *any* court that facially invalidated a law. Defendants’ underlying argument appears to be that

This distinction, Defendants claim, has been “strictly policed” by Tennessee courts for over a century, purportedly reflecting a common-law rejection of the Panel’s jurisdiction here. App.Br.30.

But first and most obviously, *this is* a civil case, not a criminal one. Although Plaintiffs challenged the constitutionality of a criminal statute, they did so in a civil cause of action, outside any criminal prosecution. Indeed, in order to appeal, Defendants completed a “Docketing Statement for *Civil Appeals*.” Despite Defendants’ attempts to recast Plaintiffs’ challenge as invoking “criminal jurisdiction” (App.Br.28), nothing about this case is “criminal.”³

Defendants’ reliance on cases predating the Three-Judge Panel Statute likewise fails. Defendants first cite the “seminal case” (App.Br.31) *J.W. Kelly & Co. v. Conner*, 123 S.W. 622 (Tenn. 1909), for the Tennessee Supreme Court’s purported rejection of a “suit in chancery

they prefer “the political process” to play out, rather than to have the courts intervene to vindicate constitutional rights. App.Br.15. Defendants’ jurisdictional objections therefore are just a means to that end – evasion of judicial review.

³ The Tennessee Supreme Court already agreed on this point. The Three-Judge Panel Statute applies to “civil action[s].” Tenn. Code Ann. § 20-18-101(a)(1). In this action, the Court “affirm[ed]” that “the statutory criteria for a three-judge panel ... have been satisfied.” (I, 91.)

court seeking a declaration” against “a criminal statute...” App.Br.30. But *J.W. Kelly* did not consider this question of declaratory power, focusing instead on whether chancery courts could *enjoin* threatened prosecutions. See 123 S.W. at 627-38. Moreover, as *J.W. Kelly* recognized, “the general rule [is] ... that the jurisdiction of courts of equity is confined and limited to *civil* and property *rights*...” *Id.* at 629 (emphasis added). Of course, that *confirms* the Panel’s jurisdiction in this case, which involves the right to keep and bear arms, which the Tennessee Supreme Court itself described as a *civil right*:

It is insisted by the Attorney General, that the right to keep and bear arms is a political, not a civil right. In this we think he fails to distinguish between the nature of the right to keep, and its necessary incidents, and the right to bear arms for the common defense. Bearing arms for the common defense may well be held to be a political right, or for protection and maintenance of such rights, intended to be guaranteed; but the right to keep them, with all that is implied fairly as an incident to this right, is a private individual right, guaranteed to the citizen, not the soldier.

Andrews, 50 Tenn. at 182.⁴

⁴ *Accord Corum v. Univ. of N.C.*, 413 S.E.2d 276, 289 (N.C. 1992) (“The civil rights guaranteed by the Declaration of Rights in Article I of our Constitution are individual and personal rights...”); cf. N.C. Const. art. I, § 30 (“A well regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed...”).

Next, Defendants cite five cases as supposed examples of Tennessee courts' rejection of chancery jurisdiction in cases seeking declaratory judgments. *See* App.Br.30-31. But as the Panel explained, "[t]he cases cited by Defendants largely deal with criminal court rules or criminal judgments – exercises of the criminal court's authority – not a legislatively enacted statute." (VII, 859.) Defendants' reliance on these cases is no more persuasive this time around.

First, Defendants cite *Spoone v. Mayor & Aldermen of Town of Morristown*, 206 S.W.2d 422 (Tenn. 1947), as an example of a chancery court lacking jurisdiction to declare "a criminal ordinance void...." App.Br.30. Although *Spoone* involved a request for both injunctive and declaratory relief against an ordinance, the Tennessee Supreme Court concluded only that "courts of equity have no jurisdiction to enjoin threatened criminal proceedings...." 206 S.W.2d at 458. The Court said nothing about declaratory relief.

Even so, Defendants complain that the Panel "brushed aside" *Spoone*, noting that *Spoone* affirmed the dismissal of a complaint "in its entirety," including its claim for declaratory relief. App.Br.32. But *Spoone* saw no need for the case to proceed on declaratory grounds,

having opined that, if the “question of jurisdiction” had been “waived and not raised,” then “we feel the ordinance valid.” 206 S.W.2d at 424. Indeed, *Spoone* delved into the merits of the challenged ordinance’s constitutionality, “hav[ing] made a rather thorough search of the authorities on the subject” and finding authorities “uphold[ing] an ordinance of the kind as a valid...” *Id.* at 425. *Spoone* does not advance Defendants’ argument.

Second, Defendants cite *Earhart v. Young*, 174 Tenn. 198 (1938), as an example of a chancery court lacking jurisdiction to declare “the application of gaming-device laws to pinball machines...” App.Br.31. But *Earhart* did not involve 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...” 174 Tenn. at 200 (emphasis added). Certainly, 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.* But the Supreme Court’s analysis, as with *J.W. Kelly* and *Spoone*, focused on the *equitable*

issue, finding that “complainants ... have no standing in court of equity with respect to injunctive relief...” *Id.* at 202.

Third, Defendants cite *Memphis Bonding Co. v. Crim. Ct. of Tenn. 30th Dist.*, 490 S.W.3d 458 (Tenn. Ct. App. 2015), as an example of a chancery court lacking jurisdiction to declare “a criminal court rule unconstitutional...” App.Br.31. But *Memphis Bonding* involved the invalidation of a sister court’s local rules. See 490 S.W.3d at 465. Plaintiffs here never sought to interfere with the internal operations of any court.

Fourth, Defendants cite *Carter v. Slatery*, 2016 Tenn. App. LEXIS 164 (Tenn. Ct. App. Feb. 19, 2016), as an example of a chancery court lacking jurisdiction to declare “a criminal judgment unconstitutional...” App.Br.31. But *Carter* rejected an inmate’s attempt to have a chancery court “declare” his prior criminal conviction invalid, which essentially would have “transform[ed] the chancery court ‘into a de facto Court of Criminal Appeals’...” 2016 Tenn. App. LEXIS 164, at *6. Although *Carter* discussed the question of chancery courts issuing declaratory relief against criminal statutes, surveying the various opinions on the topic, this Court’s holding was narrow. Indeed, *Carter* concluded 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 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.

Fifth, Defendants cite *Frazier v. Slatery*, 2021 Tenn. App. LEXIS 423 (Oct. 25, 2021), as an example of a chancery court lacking jurisdiction to declare “a criminal judgment unenforceable...” App.Br.31. But like *Carter*, *Frazier* involved an inmate’s request for a “declaratory judgment enjoining ... enforc[ement] of his 2004 criminal convictions...” 2021 Tenn. App. LEXIS 423, at *2. Indeed, this Court refused to allow “the chancery court [to] 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. *Frazier*’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 either (i) focused on equitable authority and not declaratory authority, or (ii) involved direct interference by one court against another. *J.W. Kelly*, *Spoone*, and *Earhart* involved enjoining criminal proceedings, while *Carter*, *Frazier*, and *Memphis Bonding* involved attempts to undermine the judgments or rules of sister courts. None of Defendants' cases forecloses or even addresses the Panel's jurisdiction to issue declaratory relief in a facial constitutional challenge. None of these cases holds that a chancery court cannot issue a *declaratory ruling* on a facial challenge in a civil action to the constitutionality of a statute, where there is no underlying criminal proceeding or conviction.

Thus, it is no surprise that the Tennessee Supreme Court has *blessed* a chancery court's declaration of the constitutionality of a criminal law. In *Leech v. Am. Booksellers Ass'n*, 582 S.W.2d 738 (Tenn. 1979), the Court heard a challenge to "the constitutionality of the Tennessee Obscenity Act of 1978 by *declaratory judgment actions* instituted *in the chancery court* of Davidson County and the circuit court of Shelby County." *Id.* at 740 (emphases added). As the Court explained, these cases concerned "the facial constitutionality of the Act," and "the

Davidson County chancellor [had] held substantially all of the Act unconstitutional.” *Id.* But rather than reverse the chancery case for lack of jurisdiction, the Court affirmed, “declar[ing] the entire Act void” on free-speech and vagueness grounds. *Id.* The Court saw no issue with the chancery court’s declaratory judgment and instead *praised* “Chancellor Brandt ... [for] his well-reasoned opinion.” *Id.* at 750.

This Court should reject Defendants’ unsupported theory of chancery jurisdiction and affirm.

B. The Panel Had Statutory Jurisdiction.

Next, Defendants dispute that the Panel had jurisdiction under the Declaratory Judgment Act or the Three-Judge Panel Statute to rule on the constitutionality of the challenged statutes. *See* App.Br.32. Neither of Defendants’ arguments is availing.

1. The Declaratory Judgment Act.

Defendants assert that “[t]he Declaratory Judgment Act creates a remedy, [but] not a cause of action,” and so “[a] declaratory judgment is proper in chancery ... only if chancery could have entertained a suit of the same subject matter.” App.Br.33 (quoting *Zirkle v. City of Kingston*, 396 S.W.2d 356, 363 (Tenn. 1965)). But because chancery courts have

jurisdiction to hear “civil ... rights” cases, *J.W. Kelly*, 123 S.W. at 629, a declaratory judgment *was* proper below. *See* Section I(A), *supra*.

Next, Defendants cite *Parlor v. Buckner*, 156 Tenn. 278 (1927), for the proposition “that the Declaratory Judgment Act ‘was not intended to increase the jurisdiction of the chancery court’...” App.Br.33. But *Parlor* provides strong support for Plaintiffs, suggesting that chancery courts have the authority to declare criminal statutes unconstitutional. In *Parlor*, the 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...” 156 Tenn. 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 (emphasis added). That is precisely the Panel’s conclusion. *See also Pettit v. White County*, 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”).

In the height of irony, Defendants accuse the Panel of “[r]esisting ... precedent,” while minimizing this Court’s decision in *Blackwell v. Haslam*, 2012 Tenn. App. LEXIS 23 (Tenn. Ct. App. Jan. 11, 2012), which unambiguously “held that [a] chancery court had subject matter jurisdiction” to issue a “declaratory judgment ... on [the] right to carry firearms” (App.Br.34) under Tenn. Code Ann. § 39-17-1307 – the same statute challenged here. See 2012 Tenn. App. LEXIS 23, at *9. Defendants demur that, “[t]his Court has repudiated *Blackwell* twice since,” in *Memphis Bonding and Carter*. App.Br.34. But as explained *supra*, *Memphis Bonding* involved the issuance of declaratory relief against a sister court’s local rules, while *Carter* involved an attempt to interfere with convictions entered in a criminal court.

Rather than being some aberrant authority, *Blackwell* acknowledged at least two other cases where the Tennessee Supreme Court allowed declaratory challenges to a criminal statute. See 2012 Tenn. App. LEXIS 23, 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)). And, notably, the Supreme Court declined to disturb *Blackwell* when presented with the

opportunity. *See Blackwell v. Haslam*, 2012 Tenn. LEXIS 263 (Tenn. Apr. 11, 2012). It follows that the Panel was well within its authority to issue a declaratory judgment. Indeed, the overwhelming weight of authority supports it.⁵

2. The Three-Judge Panel Statute.

Defendants next assert that the Three-Judge Panel Statute “does not alter background jurisdictional rules.” App.Br.35. But Defendants’ three-part argument fails.

First, Defendants claim the Panel erroneously “seized upon the statutory command to ‘hear[] and determine[]’ cases as a basis for assuming jurisdiction.” App.Br.36. Defendants characterize this statutory language as merely “describ[ing] what a judge presiding over a case does – not the bounds of his power.” *Id.* In support, Defendants point to statutory examples where, “[w]hen the General Assembly wants to confer new jurisdiction, it says explicitly ‘jurisdiction is conferred.’”

⁵ So too does the opinion of at least one other three-judge panel court. As the Panel observed, “one of our sister three-judge panels” arrived at the same conclusion that courts of equity may declare the constitutionality of criminal statutes. (VII, 859-60 (citing *Torch Electronics, LLC v. Mulroy*, No. CH-24-0985, at *7 (Tenn. Ch. Ct., Shelby Cnty. Nov. 19, 2024)).)

App.Br.37. But this misses the forest for the trees. The whole point of the Three-Judge Panel Statute was to create trial-judge panels specifically and uniquely to hear, among other matters, constitutional challenges to statutes and to confer on such panels the jurisdiction to carry out that task. See Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 192 (2012) (“Authorization of an act also authorizes a necessary predicate act. ‘[W]here a general power is conferred ... every particular power necessary for the exercise of the one, or the performance of the other, is also conferred.’”). The Panel rightly rejected Defendants’ argument.

Second, Defendants appeal to the presumption against implied repeal, pointing to what they describe as statutory “silen[ce] about altering background jurisdictional rules....” App.Br.37. But speaking of statutory silence, nothing in the Three-Judge Panel Statute limits *where* a qualifying action can be filed. Rather, Tennessee Supreme Court Rule 54 provides that Section 20-18-101 applies to all “civil actions filed in a trial court in this state” – not “a trial court in this state *except for a chancery court.*” Nothing in the text limits the category of “trial court” in which an action can be filed. Of course, chancery courts are trial courts,

and numerous constitutional challenges to criminal laws have originated in chancery courts.⁶ *See, e.g., Phillips v. State*, No. 23-1196-I (Tenn. Ch. Ct., Davidson Cnty.) (seeking “declaratory and injunctive relief from ... Tennessee’s criminal abortion statute” on constitutional grounds).⁷

This broad designation of eligible courts seems unlikely if, as part of their panel duties, chancery court judges could serve on a panel but lacked authority to participate. Indeed, not only is ruling on “the constitutionality of [a] state statute” precisely what these panels do, but nothing in the statute indicates that chancery court judges may *not* sit on a panel. Quite the opposite – Section 20-18-101 provides that a panel shall be composed of “trial court judges of courts of record,” which clearly includes chancellors. Indeed, the Supreme Court has assigned numerous chancellors to such panels.⁸

Third, Defendants insist that “three-judge-panels are not separate courts with special jurisdiction,” because Tennessee Supreme Court Rule 54 requires that qualifying actions “must still commence by filing a

⁶ *See Special Three-Judge Panels, Tennessee Courts*, <https://tinyurl.com/ycxwnyzs> (last visited Mar. 2, 2026).

⁷ *Allyson Phillips, et al. v. State of Tennessee, et al.*, *Tennessee Courts*, <https://tinyurl.com/3mcnc9t5> (last visited Mar. 2, 2026).

⁸ *See Special Three-Judge Panels, supra.*

complaint ‘in a trial court.’” App.Br.38. But the statute refers to “a three-judge panel” as “a court.” See Tenn. Code Ann. § 20-18-105. Likewise, Rule 54 discusses “a special three-judge trial court.” Taken together, these texts indicate that a three-judge panel court is an entirely distinct statutory creation, separate from other courts, with unique and express authority to determine certain categories of cases.

Indeed, Section 20-18-101 deprived *all* trial court judges – sitting alone – of jurisdiction to hear civil constitutional challenges. Defendants are simply incorrect that “the three-judge-panel statute [did not] alter th[e] jurisdictional rules.” App.Br.38. Following the statute’s enactment, *no* trial judge, acting alone, has the authority to issue the declaratory judgment that Plaintiffs sought.

Thus, Defendants’ attempt to recast this case as invoking “criminal jurisdiction” also fails. App.Br.28. Under the Three-Judge Panel Statute, *actual* criminal cases remain unchanged, because the statute applies only to “a civil action.” Should a criminal defendant raise a constitutional challenge, he may do so before the judge presiding over his criminal case. But if a civil litigant wishes to levy the same challenge, he can only do so before a three-judge panel.

Finally, adopting Defendants’ jurisdictional argument essentially accuses the Tennessee Supreme Court of negligence. As Defendants note, the “Tennessee Supreme Court assigned a three-judge panel to the case.” App.Br.25. The Court did so “[u]pon due consideration” of Plaintiffs’ filings. (I, 91.) Plaintiffs’ Rule 54 notice clearly stated the nature of the dispute, including “the constitutional claims asserted,” “the declaratory or injunctive relief sought,” and “the trial court in which it [wa]s pending....” Tenn. Sup. Ct. R. 54(2)(b). In other words, the Court was fully aware that Plaintiffs sought declaratory relief in a civil action filed in a chancery court against a criminal statute, and the Court “ma[de] the final determination as to whether the action qualifie[d]....” *Id.* R. 54 (3)(a)(4). Defendants seem to agree, claiming that the Supreme Court will “appoint two judges” only if it “agrees” with the “initial determination” of the “presiding judge” that “the action qualifies under the three-judge-panel statute.” App.Br.36. Defendants never explain how the Panel lacked jurisdiction when they admit the Supreme Court “agree[d]” that this action qualified for a three-judge-panel.⁹

⁹ Of course, the Tennessee Supreme Court has convened panels in other cases, and those cases would potentially be at risk were this Court to

It seems unlikely that the Tennessee Supreme Court would have blessed the three-judge panel if Plaintiffs' case was dead on arrival.¹⁰ Consistent with the Supreme Court's "final determination," this Court should affirm the Panel's jurisdictional holding and proceed to the merits. Indeed, "[t]his court does not have the prerogative to disregard decisions of the Tennessee Supreme Court. As intermediate appellate judges, we are obliged to follow the directions of the Tennessee Supreme Court...." *In re Estate of Greenamyre*, 219 S.W.3d 877, 883 (Tenn. Ct. App. 2005) (citation omitted).

II. THE PANEL PROPERLY GRANTED SUMMARY JUDGMENT TO PLAINTIFFS.

A. Defendants Misstate the Standard for Facial Challenges and Invite Absurd Results.

Despite "agree[ing] that the Going Armed and ... Parks Statutes present serious constitutional concerns," Defendants insist the statutes are facially constitutional. App.Br.39. But, not only do Defendants misstate the applicable standard, their limitless logic would mean that

accept Defendants' jurisdictional theory. *See Special Three-Judge Panels, supra.*

¹⁰ Only *one* chancery judge sat on the Panel and, thus, that judge's vote was not even necessary to the Panel's ruling.

no law could be declared unconstitutional on its face – including numerous laws that the Supreme Court *has* facially invalidated. Defendants’ argument should be rejected and the governing precedents applied as written.

For starters, cherry-picking inapposite language from *United States v. Rahimi*, 602 U.S. 680 (2024), Defendants make the accusation that “the court below ‘focused on hypothetical scenarios where [the statutes] might raise constitutional concerns, ... rather than consider the circumstances in which [the statutes] [are] most likely to be constitutional....’” App.Br.39. In reality, *Rahimi* found that “Section 922(g)(8) ... fits neatly within the [historical] tradition,” whereas “the provision is constitutional as applied to the facts of Rahimi’s own case.” *Rahimi*, 602 U.S. at 698, 693. *Rahimi* merely reached the obvious conclusion that a litigant cannot succeed in a facial challenge when *the facts of his own case* represent a constitutional application of the challenged law.

Quite the opposite here, the Panel recited the facts of this case, describing in detail Plaintiffs’ intended and unchallenged¹¹ courses of conduct. (VII, 850-54.) Those real-world “scenarios” are not “a straw man” (App.Br.39), but instead involve ordinary, law-abiding individuals peaceably bearing arms for self-defense. *That* was what the Panel focused on.¹² Defendants are the ones offering kooky “hypothetical scenarios” about the proliferation of openly carried missiles and small children bringing rifles to basketball games. (App.Br.46; VII, 894.) A D.C. court recently rejected a nearly identical argument as Defendants make here. *See Benson v. United States*, No. 23-CF-0514 at 43, (D.C. March 5, 2026) (holding D.C.’s ban on magazines over 10 rounds “facially

¹¹ Defendants concede that “[t]here are no issues of material fact” in dispute. App.Br.39.

¹² Defendants claim that “Plaintiffs have neither identified a substantial number of ... unconstitutional applications nor explained how those applications outnumber [the] constitutional applications.” App.Br.51. But Defendants never explain how they reach that conclusion. Plaintiffs have thousands of members who “wish to possess and carry firearms” in locations and contexts covered by the general prohibitions of the Going Armed and Parks Statutes. (I, 4.) And, as the Panel stated, the challenged statutes generally “criminaliz[e] ... the constitutional right to bear arms.” (VII, 876.) How that means a “substantial number” of – indeed, virtually all – applications are not unconstitutional, Defendants do not explain.

unconstitutional because it is unconstitutional on its plain terms, not just in some idiosyncratic applications...”).

Defendants’ language from *Rahimi* thus stands for nothing more than the obvious – that a court will not facially invalidate a law based on a hypothetical tiny number of unconstitutional cases, when the very facts under review constitute a constitutional application. In contrast, this case involves Defendants’ attempt to salvage the challenged statutes based on the (at best) fractional percent of “hypothetical scenarios,” even after admitting that the law is unconstitutional in the rest of cases. Of course, “[i]n determining whether a law is facially invalid, we must be careful not to go beyond the statute’s facial requirements and speculate about ‘hypothetical’ or ‘imaginary’ cases.” *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 449-50 (2008). Indeed, “[l]egislation is measured for consistency with the Constitution by its impact on those whose conduct it affects.... The proper focus of the constitutional inquiry is the group for whom the law is a restriction....” *City of Los Angeles v. Patel*, 576 U.S. 409, 418 (2015).¹³ Here, the

¹³ Courts do not reject “facial challenge[s] whenever a defendant can conjure up just one hypothetical factual scenario in which

challenged statutes overwhelmingly restrict ordinary citizens like Plaintiffs from bearing arms for self-defense. *That* should be the focus of this Court’s analysis, not Defendants’ fanciful hypotheticals about “missiles” and “hand grenades.” App.Br.46.

Consider Defendants’ proposed standard, which they tease from dicta in *United States v. Salerno*, 481 U.S. 739 (1987). Rather than “demonstrat[ing] a plainly legitimate sweep of the statute” (VII, 872), Defendants posit that Plaintiffs “must show ‘that there are *no circumstances* under which the statute, as written, may be found valid.’” App.Br.40 (emphasis added). This means literally not a single one, Defendants say. This exacting standard, Defendants claim, goes hand-in-hand with the challenged statutes’ “presumption of constitutionality...” *Id. But see Bruen*, 597 U.S. at 17, 24 (presuming *un*constitutionality).

But not even the Supreme Court understands *Salerno* to require literal, mathematical, 100-percent precision in facial challenges. Indeed, “[t]o the extent we have consistently articulated a clear standard for

implementation of the state law would” be lawful. *Lozano v. City of Hazleton*, 724 F.3d 297, 313 n.22 (3d Cir. 2013).

facial challenges, it is not the *Salerno* formulation, which has never been the decisive factor in any decision of this Court, including *Salerno* itself....” *City of Chicago v. Morales*, 527 U.S. 41, 55 n.22 (1999). In fact, rigid application of *Salerno*’s no-circumstances standard represents a minority view among the federal circuits today.¹⁴ For example, the Tenth Circuit explains that “[t]he idea that the Supreme Court applies the ‘no set of circumstances’ test to every facial challenge is simply a fiction, readily dispelled by a plethora of Supreme Court authority.” *Doe v. City of Albuquerque*, 667 F.3d 1111, 1124 (10th Cir. 2012).¹⁵

In fact, the Supreme Court recently explained that *Salerno* is only one of the ways to succeed on a facial challenge: “a plaintiff cannot

¹⁴ See *Mont. Med. Ass’n v. Knudsen*, 119 F.4th 618, 633 (9th Cir. 2024) (McKeown, J., concurring) (“Four circuits ... apply *Salerno* alone; [three] have, with some exceptions, quietly followed the Supreme Court’s lead in articulating the *Salerno* and *Washington State Grange* standards as alternatives; and six circuits ... have explicitly weakened or abandoned *Salerno*.”).

¹⁵ See also *Sonnier v. Crain*, 613 F.3d 436, 463-64 (5th Cir. 2010) (Dennis, J., concurring in part and dissenting in part) (calling the *Salerno* formulation “nothing more than a controversial dictum” and noting that “diligent research” has failed to uncover “a single Supreme Court case – including *Salerno* itself – in which” the Court actually relied on the formulation to resolve a facial challenge), *reiterated on reh’g*, 634 F.3d 778, 779 (5th Cir. 2011) (Dennis, J., concurring in part and dissenting in part).

succeed on a facial challenge unless he ‘establish[es] that no set of circumstances exists under which the [law] would be valid,’ *or* he shows that the law lacks a ‘plainly legitimate sweep.’” *Moody v. NetChoice, LLC*, 603 U.S. 707, 723 (2024) (emphasis added); *see also Americans for Prosperity Found. v. Bonta*, 594 U. S. 595, 615 (2021) (The question is whether “a substantial number of [the law’s] applications are unconstitutional, judged in relation to the statute’s plainly legitimate sweep.”). 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*, 552 U.S. at 449. That alone is enough to dispel Defendants’ misstatement of the standard for facial challenges.¹⁶

¹⁶ Should this Court need any further confirmation, *Patel*, 576 U.S. 409, is instructive. There, the Supreme Court rejected the argument that “facial challenges to statutes authorizing warrantless searches must fail because such searches will never be unconstitutional in all applications.” *Id.* at 417. Declining to apply *Salerno*’s dicta in the Fourth Amendment context, the Court explained that *Salerno* “would preclude facial relief in every Fourth Amendment challenge to a statute authorizing warrantless searches. For this reason alone, the City’s argument must fail: The Court’s precedents demonstrate not only that facial challenges to statutes authorizing warrantless searches can be brought, but also that they can succeed.” *Id.* at 418.

Next, Defendants claim that *Moody*'s "plainly legitimate sweep" applies only in First Amendment cases, and its formulation of the facial challenge standard is "in this singular context." App.Br.42 (citing *Moody*, 603 U.S. at 723). But that is "plainly" wrong. As a lead opinion of the Court explained in *Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 202 (2008) – a Fourteenth Amendment voting-rights case – "[a] facial challenge must fail where the statute has a 'plainly legitimate sweep.'" *Id.* at 202. In fact, many courts have used *Moody*'s alternative approach specifically in the *Second Amendment context*. See, e.g., *Antonyuk v. James*, 120 F.4th 941, 983 (2d Cir. 2024) (cleaned up) ("To mount a successful facial challenge, the plaintiff must establish that no set of circumstances exists under which the law would be valid, or show that the law lacks a plainly legitimate sweep").¹⁷ And those are just the circuit courts. The district courts are too numerous to mention.

Moreover, Defendants misrepresent what the Court said in *Moody*. When *Moody* used the phrase "in this singular context," the Court was

¹⁷ See also *United States v. Booker*, 644 F.3d 12, 22 (1st Cir. 2011); *United States v. Canada*, 123 F.4th 159, 161 (4th Cir. 2024); *United States v. Decastro*, 682 F.3d 160, 168 (2d Cir. 2012); *NRA v. Bondi*, 133 F.4th 1108, 1114 (11th Cir. 2025).

not describing when the “plainly legitimate sweep” test applies. Rather, the Court’s full statement was that, “in this singular context, even a law with ‘a plainly legitimate sweep’ may be struck down in its entirety.” *Id.* at 723-24. In other words, the Court’s “singular context” language was describing a unique standard *even lower than* “plainly legitimate sweep.” Plaintiffs need not invoke that “singular context” to prevail here.

So too is it “fiction” (*Doe*, 667 F.3d at 1124) that rigid application of *Salerno* is somehow still required in the Second Amendment (or Article I, Section 26) context. *See Antonyuk*, 120 F.4th at 983. Defendants cite *Bruen* and *Rahimi* to claim that “[t]he Court never ... displace[d] decades of precedent placing the burden on plaintiffs to prove their facial constitutional challenges.” App.Br.42. But *Bruen* made no mention of *Salerno*. Nor did *District of Columbia v. Heller*, 554 U.S. 570 (2008). Both *Heller* and *Bruen* facially invalidated gun control laws despite their coverage of potentially unprotected persons or conduct.¹⁸

¹⁸ Resisting these precedents, Defendants call the “plainly legitimate sweep” approach “unusual.” App.Br.43; App.Br.42 (quoting *United States v. Hansen*, 599 U.S. 762, 769 (2023)). But Defendants conflate that standard with the completely distinct doctrine of *First Amendment overbreadth*, which is what the Court called “unusual” in *Hansen*. *See Hansen*, 599 U.S. at 769. Even so, at least one circuit court has applied the overbreadth doctrine in a Second Amendment case. *See Baird v.*

Indeed, *Heller* facially invalidated an across-the-board handgun ban despite the law’s obvious application to prohibited persons, such as “felons and the mentally ill...” *Heller*, 554 U.S. at 629, 626. Likewise, *Bruen* facially invalidated a discretionary public-carry licensing regime, even though such restrictive regimes obviously could prevent both prohibited persons from carrying – *along with* law-abiding Americans. *See Bruen*, 597 U.S. at 70. If the Court had understood the standard for facial challenges the all-or-nothing way Defendants frame it, both decisions would have come down the other way.

Of course, *Heller* and *Bruen*’s common thread was a focus on *history*. *See Heller*, 554 U.S. at 629 (observing that “[f]ew laws in the history of our Nation have come close” to the challenged handgun ban); *Bruen*, 597 U.S. at 70 (lacking “an American tradition justifying the State’s proper-cause requirement”). If a firearm regulation is ahistorical, then it is facially unconstitutional regardless of whether the Government can conjure fringe hypotheticals in an attempt to save it. Conversely,

Bonta, 163 F.4th 723 (9th Cir. 2026); *see also Bruen*, 597 U.S. at 70 (“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.’”).

Rahimi's firearm regulation *was* historical, at least as applied to Rahimi himself.¹⁹

Nor does Defendants' proposed standard make any sense in the Second Amendment context or any other. If litigants truly had to show a statute had *exactly zero constitutional applications*, then *Loving v. Virginia*, 388 U.S. 1 (1967), would have been decided differently. Rather than striking Virginia's anti-miscegenation law on its face, a Supreme Court applying Defendants' standard would have upheld the law's ban on interracial marriage, on the theory that it might constitutionally be applied at the margin to prohibit a marriage between a 60-year-old and

¹⁹ Defendants' four other Second Amendment cases fare no better. See App.Br.41. *United States v. Ogilvie*, 153 F.4th 1098 (10th Cir. 2025), and *United States v. Perez-Gallan*, 125 F.4th 204 (5th Cir. 2024), both found provisions of 18 U.S.C. § 922 constitutional *as applied* – they did not repudiate facial challenges as a general matter. Moreover, *LaFave v. County of Fairfax*, 149 F.4th 476 (4th Cir. 2025) found a *wide range of everyday constitutional applications* of the challenged statute – much more than the fringe hypotheticals Defendants offer here. Finally, *Wolford v. Lopez*, 116 F.4th 959 (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 (emphases added). That is precisely what the Panel found below.

a 6-year-old. If that sort of approach to facial challenges sounds untenable, that's because it is.²⁰

In the Second Amendment context as well, adoption of Defendants' standard would mean that no law could ever be declared facially unconstitutional. A law *banning all firearms* could be upheld against facial challenge on the theory that howitzers may be restricted. A law (like the challenged statute) *flatly banning the bearing of arms* in all places could be upheld on the theory that weapons can be restricted at nuclear facilities. And a law *banning all people* from possessing arms could be upheld on the theory that it could be constitutionally applied to newborns. Such an approach to facial challenges is nonsensical, and has been rejected numerous times (explicitly and implicitly) by federal and state courts at all levels. *See Bd. of Airport Comm'rs v. Jews for Jesus*, 482 U.S. 569, 574, 573 (1987) ("On its face, the resolution at issue in this case reaches the universe of expressive activity ... purport[ing] to create

²⁰ Defendants' parade of horrors fails for an additional reason: As the Panel explained, there already are plenty of other laws on the books independently covering the fringe hypotheticals Defendants raise. (VII, 915.)

a virtual ‘First Amendment Free Zone’” and therefore “is facially unconstitutional.”).

Unsurprisingly, then, a number of Tennessee courts, including this Court, have employed the Panel’s “plainly legitimate sweep” standard, or some version thereof. *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 (Tenn. Ct. App. Mar. 27, 2001); *Frogge v. Joseph*, 2022 Tenn. App. LEXIS 240 (Tenn. Ct. App. June 20, 2022). This Court should not depart from these precedents now.

B. The Going Armed Statute Is Facially Unconstitutional.

Claiming that Plaintiffs “got greedy” by mounting a facial challenge, Defendants argue the Going Armed Statute is facially constitutional because it covers (1) so-called “dangerous and unusual weapons” like “bombs, grenades, rockets, and missiles” (App.Br.45), and (2) “carrying offensively,” as opposed to carrying defensively (App.Br.47). Neither argument is availing.

But at the outset, Defendants surmise that “Plaintiffs’ claim arguably fails at th[e] threshold” because “the Going Armed Statute ... encompasses some dangerous and unusual weapons (like grenades and bombs), ... which may not even qualify as ‘arms’ within the meaning of the Constitution.” App.Br.44. In other words, Defendants think they need not bear their historical burden under *Bruen* to justify their flat ban on the bearing of firearms in public, because some weapons are not even *presumptively* protected “Arms” under the Second Amendment’s plain text. That approach is dead wrong.

In *Heller*, the Court instructed that the term “Arms” means “[w]eapons of offence, or armour of defence,” and “any thing that a man wears for his defence, or takes into his hands, or useth in wrath to cast at or strike another,” and includes “all firearms” as originally understood. *Heller*, 554 U.S. at 581. And, because the Constitution must protect enumerated rights in modern contexts, the Court explained that “the Second Amendment extends, *prima facie*, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding.” *Id.* at 582. Thus, so long as a weapon is “bearable” – *i.e.*, able to be worn on the person or held in the hand – it is

presumptively protected, and “we use history to determine which modern ‘arms’ are [conclusively] protected...” *Bruen*, 597 U.S. at 28.

Defendants cannot claim facial constitutionality – and shirk their historical burden – simply by pointing to “grenades and bombs.” Indeed, “[t]he Constitution does not permit a legislature to ‘set a net large enough to catch all possible offenders, and leave it to the courts to step inside and say who could be rightfully detained’...” *Morales*, 527 U.S. at 60. Rather, *Bruen* teaches that its framework applies to every case involving a “firearm regulation.” *Bruen*, 597 U.S. at 17, 24. Defendants can hardly claim that the challenged statute, which prohibits “[a] person [from] carr[ying], with the intent to go armed, a firearm,” is not a “firearm regulation.”²¹ So the threshold test is met, and *Bruen*’s framework applies.

At bottom, Defendants’ singular focus on fringe scenarios distracts from what the Going Armed Statute *actually does*. See *Patel*, 576 U.S. at 418-19 (“[W]hen addressing a facial challenge ... the proper focus of the

²¹ *Bruen*’s mandate was clear: “Only if a firearm regulation is consistent with this Nation’s historical tradition may a court conclude that the individual’s conduct falls outside the Second Amendment’s ‘unqualified command.’” *Bruen*, 597 U.S. at 17.

constitutional inquiry is searches that the law actually authorizes, not those for which it is irrelevant.”). Here, it “criminalizes the entire right-to-bear-arms portion of the Second Amendment.” (VII, 876.) Defendants never grapple with this fact head-on.

1. “Dangerous and Unusual Weapons.”

Defendants assert a historical tradition of “prohibiting” certain weapons outright, apparently believing the Going Armed Statute can be constitutionally applied at least as to those weapons. App.Br.45. But again, under this strained logic, no facial constitutional challenge could ever succeed. Consider a law prohibiting all public. Under Defendants’ logic, a facial challenge would *fail* because, for example, one “cannot yell ‘Fire’ in a crowded theater,”²² one ostensibly constitutional application of the law. *But see Bd. of Airport Comm’rs*, 482 U.S. at 573-74. The same would be true in a challenge to a blanket authorization of warrantless home and vehicle searches for contraband. Defendants’ logic would be that, because *some* of the homes and vehicles searched no doubt will be of persons on probation from jail, who do not possess full Fourth

²² *Bridges v. California*, 314 U.S. 252, 296 (1941) (Frankfurter, J., dissenting).

Amendment rights, then the statute has *at least some* constitutional application and no facial challenge can succeed. *But see Patel*, 576 U.S. at 417-18. This sort of argument is as absurd as it is unworkable.

Defendants first cite the statute’s coverage of weapons like “bombs, grenades, rockets, and missiles” in support of their novel theory, because these weapons apparently “receive no constitutional protection under the Second Amendment.” App.Br.46. But at no point do Defendants cite a decision of a Tennessee court or the U.S. Supreme Court to support the notion that any of these types of weapons is *not* constitutionally protected. And aside from failing to cite any authority that actually binds this Court, Defendants’ argument fails for two additional reasons.

First, the Supreme Court’s cases do *not* say what Defendants think they say. Defendants note that *Heller* briefly mentioned historical laws “prohibiting the carrying of ‘dangerous and unusual weapons.’” App.Br.45. But neither *Heller* nor any of the Court’s subsequent decisions explained what that historical term actually means. As Justice Thomas recently cautioned, “[w]e have never squarely addressed what types of weapons are ‘Arms’ protected by the Second Amendment[,] ... leav[ing] open essential questions such as what makes a weapon

‘bearable,’ ‘dangerous,’ or ‘unusual.’” *Harrel v. Raoul*, 144 S. Ct. 2491, 2492 (2024) (statement of Thomas, J.). Defendants treat “open ... questions” as foregone conclusions.

Nor did *Bruen* “reaffirm[]” the “‘historical tradition’ of *prohibiting* ‘dangerous and usual weapons,’” as Defendants claim. App.Br.45 (emphasis added). As *Bruen* in fact clarified, and *Rahimi* later reiterated, such a supposed tradition reached only “the *carrying* of weapons” in a certain manner in “public,” and did not actually prohibit mere possession. *Bruen*, 597 U.S. at 47 (emphasis added); *accord Rahimi*, 602 U.S. at 691 (“*carrying*”); *see* 4 William Blackstone, Commentaries on the Laws of England 148-49 (John Taylor Coleridge ed., 1825). The Going Armed Statute, in contrast, reaches possession even within the home. *See* Tenn. Code Ann. § 39-17-1307(a)(1).

Finally, Defendants claim that “short-barreled shotguns” may be banned. App.Br.45 (citing *United States v. Miller*, 307 U.S. 174 (1939)). But *Heller* warned that “[i]t is particularly wrongheaded to read *Miller* for more than what it said.” *Heller*, 554 U.S. at 623. *Miller* was briefed only by the Government on appeal, and the “Court’s opinion itself ... discusse[d] *none* of the history of the Second Amendment.” *Id.* at 624.

Ultimately, *Miller* merely lacked “judicial notice” on the topic of short-barreled shotguns’ constitutional protection. *Miller*, 307 U.S. at 178. It provides no support for Defendants here.

Second, Defendants’ purportedly unprotected weapons already are regulated under a separate statute, which reaches simple possession. *See* Tenn. Code Ann. § 39-17-1302 (regulating the possession of “machine gun[s]” and “explosive[s]”). Plaintiffs have not challenged that statute in this litigation. So a finding of facial unconstitutionality as to the Going Armed Statute would not affect the “carr[ying], with the intent to go armed,” of those independently prohibited weapons, as Tenn. Code Ann. § 39-17-1302’s broader regulation of *possession* would remain operative. *See Patel*, 576 U.S. at 418 (“The proper focus of the constitutional inquiry is the group for whom the law is a restriction, not the group for whom the law is irrelevant.”).

2. Carrying Offensively.

Next, Defendants claim that, “[a]lthough Tennessee’s law admittedly sweeps broader than some historical going armed statutes – by prohibiting both offensive *and* defensive carry – no one can seriously dispute that it constitutionally prohibits *offensive* carry.” App.Br.48. But

because the Going Armed Statute “admittedly” reaches *all* carrying of firearms (App.Br.49), it broadly prohibits the right to keep and bear arms. *See* Tenn. Const. art. I, § 26. *That* is ahistorical, and it renders the statute facially unconstitutional.

Bruen once again refutes Defendants’ facial-challenge theory. *Bruen* facially invalidated a New York licensing requirement that demanded applicants show “proper cause” to carry in public. *Bruen*, 597 U.S. at 12. Of course, while “self-defense” is a “proper cause” to exercise one’s Second Amendment rights, “to terrorize the people” (*id.* at 47) likely is not. Yet the Court did not limit relief as applied to peaceable, legitimate, or lawful purposes. Rather, the Court struck the requirement facially, because “American governments simply have not broadly prohibited ... public carry....” *Id.* at 70; *Rahimi*, 602 U.S. at 698 (“the regulation struck down in *Bruen* ... broadly restrict[ed] arms use by the public generally”).

But that is precisely what the Going Armed Statute does, by Defendants’ own admission. It “prohibit[s] both offensive *and* defensive carry” (App.Br.48) – *i.e.*, *all* carry as a general matter. And that prohibition extends even to the home – hardly a place where “going

armed” in one’s own living room could ever “terrorize the people” outside. Ironically, that means the Going Armed Statute is no “relic of the past” (App.Br.52) at all (as it is ahistorical), nor is it “a direct heir” (App.Br.48) of other historical “going armed” laws. There is no historical tradition supporting it, and Defendants’ fringe hypothetical about “offensive carry” fails to clear the starting gate. (I, 2-6 (Plaintiffs confirming they are law-abiding and wish to carry for self-defense).)

One more point bears emphasis, and it too is fatal to Defendants’ argument. Tennessee law independently prohibits the “offensive” conduct that Defendants insist they need the Going Armed Statute to prosecute. Indeed, Tennessee law separately prohibits the “brandishing” of firearms via Tenn. Code Ann. § 39-13-102, which criminalizes aggravated assault with a deadly weapon.²³ While Section 39-13-102 might be the true “direct heir” (App.Br.48) of historical “going armed” laws, Tennessee’s “problematic” (App.Br.50) Going Armed Statute “means something quite different....” (VII, 874.) And “[t]he proper focus

²³ See, e.g., Brittney Baird, *21-Year-Old Driver Charged with Brandishing Gun on I-24*, WKRN (June 13, 2023), <https://tinyurl.com/5n6rpr7f> (charging “brandishing” as “aggravated assault with a deadly weapon”).

of the constitutional inquiry is the group for whom the law is a restriction, not the group for whom the law is irrelevant.” *Patel*, 576 U.S. at 418. The Going Armed Statute prohibits myriad innocuous conduct, and its absence will make no difference to those who carry “offensively.”

* * *

Choosing distraction over engagement, Defendants never discuss the core of the Going Armed Statute – its blanket criminalization of all firearm carry – and how that affects everyday people like Plaintiffs. Instead, Defendants focus exclusively on the fringes – theoretical scenarios about hypothetical conduct that plenty of *other* Tennessee and federal laws already regulate, and which Plaintiffs do not challenge here. (VII, 915.) The Going Armed Statute is facially unconstitutional, and this Court should affirm the decision below.

C. The Parks Statute Is Facialy Unconstitutional.

Defendants argue the Parks Statute is facially constitutional because it covers (1) “dangerous and unusual weapons,” (2) “carrying firearms offensively,” (3) “non-permit holders,” and (4) “sensitive places, like public parks, public spaces used for elections, and areas used by children.” App.Br.52. Defendants’ argument with respect to “dangerous

and unusual weapons” and offensive carry merely parrots the same theme that permeates their brief – that conjuring fringe hypotheticals can save an overwhelmingly unconstitutional statute – and so it fails for the same reasons already discussed under the Going Armed Statute. Thus, Plaintiffs discuss only the latter two categories here.

1. Non-Permit Holders.

Defendants claim that a “carveout” to the Parks Statute renders the law facially constitutional: “handgun carry permit” holders “may bring a handgun into a public park or other protected area.” App.Br.54. As Defendants’ theory goes, “Tennessee’s shall-issue licensing regime is presumptively constitutional” “[u]nder *Bruen*,” and so requiring a handgun permit to carry in parks is “[t]herefore ... constitutional[]....” *Id.* (emphasis added). In just two sentences, Defendants manage to transform a supposed *presumption* into a *conclusion*. But *Bruen*’s discussion of shall-issue licensing schemes cannot do the heavy lifting Defendants require, nor can Defendants’ paltry historical showing satisfy their burden under *Bruen*.

But at the outset, regardless of whether licensure to exercise an enumerated right is constitutional (it is not),²⁴ licensure to carry within the Parks Statute’s locations does not cure the historical defect that licensure is still an *affirmative defense* to the statute’s *general prohibition*. Defendants flip the “general right to public[] carry” on its head, rendering it an affirmative defense to a default rule of *no carry*. *Bruen*, 597 U.S. at 31. Of course, any firearm regulation that “broadly restrict[s] arms use by the public generally” will be ahistorical and therefore facially unconstitutional. *Rahimi*, 602 U.S. at 698.

Defendants also misstate *Bruen*’s footnote nine. They claim it “proves the facial validity of Tennessee’s law.” App.Br.55. But although this footnote discussed various *optional*²⁵ shall-issue regimes that were

²⁴ *Shuttlesworth v. Birmingham*, 394 U.S. 147, 151 (1969) (“that a person faced with such an unconstitutional licensing law may ignore it and engage with impunity in the exercise of the right”); *Bruen*, 597 U.S. at 70 (“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.’”).

²⁵ Indeed, in the public-carry context, a majority of the 43 states *Bruen* discussed either do not require licensure to carry at all, or require licensure only to carry concealed. *See Bruen*, 597 U.S. at 38 n.9. In other words, *Bruen* declined “to suggest the unconstitutionality” of regimes that largely impose *no restrictions* on the Second Amendment in the first place. *Id.* In contrast, by requiring a handgun permit as a condition to carry in parks, the Parks Statute is an outlier among the state regimes

not at issue in that case,²⁶ *Bruen* never purported to wholesale exempt dozens of convoluted firearm regimes from its analytical framework.²⁷ To the contrary, “consisten[cy] with this Nation’s historical tradition” is the “[o]nly” way a court may uphold a firearm regulation. *Bruen*, 597 U.S. at 17. Contrary to footnote nine, *Bruen*’s “unqualified command” was, in fact, a “hold[ing].” *Id.*²⁸

in *Bruen*’s footnote nine, which largely do not *mandate* licensure, but only offer it as an option (primarily, for reciprocity purposes with other states).²⁶ Obviously, Tennessee’s licensing regime was not challenged in *Bruen*, which only noted that various regimes like Tennessee’s “*appear* to operate” in various ways. *Bruen*, 597 U.S. at 13 n.1 (emphasis added). *Bruen* could not have opined on the constitutionality of dozens of states’ regimes, and the peculiarities of each, given “Article III’s strict prohibition on ‘issuing advisory opinions.’” *Haaland v. Brackeen*, 599 U.S. 255, 294 (2023).

²⁷ Consider, for example, Nevada’s licensing regime from this list. *See Bruen*, 597 U.S. at 13 n.1. Nevada authorizes licensing officials to delay the issuance of a license for up to 120 days, or *four months*. Nev. Rev. Stat. § 202.366(3). Did *Bruen* really approve a four-month wait to exercise an enumerated right when it also repudiated “lengthy wait times in processing license applications”? App.Br.55; *Bruen*, 597 U.S. at 38 n.9. Of course not. *See Ortega v. Grisham*, 148 F.4th 1134 (10th Cir. 2025) (striking a seven-day waiting period under the Second Amendment).

²⁸ Defendants also note (at App.Br.55) that two Justices believed states “employ[ing] ... shall-issue licensing regimes ... may continue to do so.” *Bruen*, 597 U.S. at 80 (Kavanaugh, J., and Roberts, C.J., concurring). But “[b]ecause they ... joined the majority opinion, however, these ‘vanilla concurrences’ have ‘no impact’ and ‘count[] for nothing’ legally.” *Commonwealth v. Donnell*, 2023 Mass. Super. LEXIS 666, at *5 n.3 (Mass. Super. Ct. Aug. 3, 2023) (alteration in original), *aff’d*, 252 N.E.3d

Next, Defendants concede that *Bruen*'s footnote nine was not “strictly necessary to the Court’s holding,” App.Br.56 (thereby walking back their earlier conclusion that the Parks Statute “constitutionally prohibits *non*-permit holders,” App.Br.55), but claim that it nevertheless is “welcome guidance’....” App.Br.56. To that end, Defendants collect three nonbinding cases that (erroneously) upheld the constitutionality of certain licensing regimes, whether presumptively or conclusively. *See id.* But the only “guidance” this Court needs is *Bruen*'s clear instruction. All “firearm regulation[s]” are subject to *Bruen*'s textual and historical framework, and Defendants must bear their burden here. *Bruen*, 597 U.S. at 17 (“we hold”). Indeed, as one district court explained, “[r]eading the passage as [Defendants] urge[] would put *Bruen*'s dicta in direct contradiction with *Bruen*'s holding.” *United States v. Ayala*, 711 F. Supp. 3d 1333, 1351 (M.D. Fla. 2024), *appeal dismissed*, No. 24-10462 (11th Cir. Aug. 22, 2025). This Court should avoid such “contradiction” and apply *Bruen*'s test as written.

475 (Mass. 2025), *abrogated on other grounds*, *Commonwealth v. Rodriguez*, 267 N.E.3d 77, 92 n.8 (Mass. 2025).

Finally, Defendants attempt to justify the Parks Statute’s permit requirement historically. But Defendants’ vague appeals to “modern scholarship” and “surety laws” (App.Br.57) do not justify licensure to carry in public.²⁹ First, Defendants do not actually identify a single historical analogue of their own, and “we are not obliged to sift the historical materials for evidence to sustain [Tennessee’s] statute. That is [Defendants’] burden.” *Bruen*, 597 U.S. at 60. Even so, the “licensing laws” Defendants obliquely reference are no analogues to the Parks Statute’s permit requirement. One category of laws licensed only the “commercial sale, transport, or firing of weapons” (App.Br.57) – *i.e.*, not the *possession or carry* of weapons. That is not a remotely “comparable burden on the right of armed self-defense” as *Bruen* requires, failing its analogical “how.” *Bruen*, 597 U.S. at 29. And the second category of laws licensed “the possession ... of gunpowder.” App.Br.57. But as *Heller* already explained, these were “fire-safety laws” that “required only that

²⁹ Defendants repeatedly invoke what the Tennessee General Assembly must have known when it enacted various laws. *See, e.g.*, App.Br.53-54. But the General Assembly recently did away with requiring permits to carry generally. This, of course, is evidence that the General Assembly now recognizes, as do the legislatures in a majority of states, that preconditioning public carry on a permission slip was unconstitutional.

excess gunpowder be kept in a special container....” *Heller*, 554 U.S. at 632. That is a completely different “why.” *Bruen*, 597 U.S. at 29. Defendants never suggested that the holstered or concealed handguns of gun owners risk setting parks ablaze.

Nor do Defendants’ “concealed weapons carry license laws” move the needle. App.Br.57. As Defendants admit, these laws were enacted “between the Civil War and the early 1900s.” *Id.* But the Court “generally assume[s] that the scope of the protection applicable to the ... States is pegged to the public understanding of the right when the Bill of Rights was adopted in 1791.” *Bruen*, 597 U.S. at 37. Thus, “19th-century evidence [i]s ‘treated as mere confirmation of what the Court thought had already been established.’” *Id.* Because Defendants fail to show any corresponding tradition of requiring carry licensure *at the Founding*, this late-in-time evidence “obviously cannot overcome or alter that text.” *Id.* at 36.

Finally, surety laws are no analogue to carry licensing, either. *See* App.Br.57. Rather than setting a precondition to any public carry, surety laws were targeted, individualized, and reactive measures, imposed only when a particular person was shown to pose a concrete threat to another.

See Bruen, 597 U.S. at 55. Aligning with their common theme, Defendants again seek to broadly disarm everyone based on laws that were only ever applied to a small minority of persons under specific facts. If surety laws (applied to a few) justify licensing (applied to all) then, again, the Government could ban everyone from possessing firearms on the theory that some portion of “everyone” includes felons. That is not the law, in this State or anywhere else.³⁰

2. “Sensitive Places.”

Next, Defendants claim the Parks Statute is facially constitutional because it “constitutionally restricts the carry of firearms in sensitive places, like public parks, public spaces used for elections, and recreational areas used by children.” App.Br.58. But none of these locations is historically “sensitive,” and the Panel correctly dispensed with each.

³⁰ *See also* Oral Argument at 47:28, *Md. Shall Issue, Inc. v. Moore*, No. 21-2017 (4th Cir. Mar. 10, 2023), <https://tinyurl.com/bddhju9> (Judge Richardson opining that “you’ve got a community, and you think a crime is about to occur ... and you round up everybody ... for thirty days ... and you say ... Most of you, y’all are great, you’re law-abiding citizens. But somebody here is bad, and you might be planning on doing something bad. ... We would say that is an infringement of the Fourth Amendment, right, even if it was designed to protect the public....”).

a. Public Parks.

Defendants begin not by proffering Founding-era firearm restrictions on commons, greens, and other public parkland (and indeed, they never do), but rather with a series of characterizations about the Supreme Court’s discussion of “sensitive places.” App.Br.58-59. These characterizations are wrong.

First, Defendants claim “schools and government buildings’ as sensitive places.” App.Br.59. But *Bruen* never endorsed these locations as “sensitive” – and for good reason. As to the former location, *Bruen* acknowledged that, in the mid-to-late 19th century, teachers at Freedmen’s schools often carried firearms “to defend themselves and their communities” from racial violence. *Bruen*, 597 U.S. at 61. And as to the latter, “not every government building – certainly not ordinary post offices,” for example – is a “sensitive place.” *Ayala*, 711 F. Supp. 3d at 1343. The historical (and modern) counterexamples are perhaps too numerous to list.

Second, Defendants acknowledge (at App.Br.59) that “the historical record yields relatively few 18th- and 19th-century ‘sensitive places,’” like “legislative assemblies, polling places, and courthouses....” *Bruen*, 597

U.S. at 30. But Defendants claim the sensitivity of these locations is definitively “settled...” App.Br.59. Not so. *Bruen* only “assume[d]” it so, simply because no one at the time had “dispute[d]” those prohibitions. *Bruen*, 597 U.S. at 30. Even so, *Bruen* instructed courts to “use analogies to *those* historical regulations ... to determine” whether “modern regulations ... in new ... sensitive places are constitutionally permissible.” *Id.* (emphasis added).

Third, and relatedly, Defendants claim that modern sensitive places “need not be ‘identical to ones that could be found in 1791.’” App.Br.59. But even so, as *Bruen* explained, they must be *analogous* to “legislative assemblies, polling places, and courthouses.” *See Bruen*, 597 U.S. at 30. But State forests are not analogous to federal courthouses.

Accordingly, the common features of these historical locations should guide this Court’s analysis here. As one district court explained, legislative assemblies, polling places, and courthouses are all “civic locations sporadically visited in general, where a bad-intentioned armed person could disrupt key functions of democracy,” and they “are typically secured locations, where uniform lack of firearms is generally a condition of entry, and where government officials are present and vulnerable to

attack.” *Hardaway v. Nigrelli*, 639 F. Supp. 3d 422, 440 (W.D.N.Y. 2022) (emphases removed).³¹ Public parks share none of these features, and so they clearly are nonsensitive.

Even so, Defendants insist there is a historical tradition of banning firearms in parks. App.Br.60. But to find this “tradition,” Defendants look not to the Founding, the Court’s temporal focal point for constitutional analysis. *See Bruen*, 597 U.S. at 37; *Rahimi*, 602 U.S. at 692 (“apply[ing] faithfully the balance struck by the founding generation to modern circumstances”).³² Rather, Defendants rely exclusively on “Reconstruction-era history” and the decisions of two of the most anti-

³¹ The Second Circuit vacated *Hardaway*’s preliminary injunction in *Antonyuk v. Chimento*, 89 F.4th 271 (2d Cir. 2023), but it did so only on mootness grounds because New York had amended the enjoined law to authorize the *Hardaway* plaintiffs’ desired conduct while the appeal was pending. *Id.* at 343. The Second Circuit did not specifically overrule *Hardaway*’s reasoning and, in fact, it affirmed a similar preliminary injunction protecting even more conduct, which New York’s amended law had not mooted. *See id.* at 352.

³² *Accord Lynch v. Donnelly*, 465 U.S. 668, 674 (1984) (First Amendment Establishment Clause); *Espinoza v. Mont. Dep’t of Revenue*, 591 U.S. 464, 482 (2020) (noting that “a tradition” that “arose in the second half of the 19th century,” even in “more than 30 States[,] ... cannot by itself establish an early American tradition” as to the Free Exercise Clause); *Virginia v. Moore*, 553 U.S. 164, 168 (2008) (Fourth Amendment); *Gamble v. United States*, 587 U.S. 678, 683 (2019) (Fifth Amendment); *Ramos v. Louisiana*, 590 U.S. 83, 91 (2020) (Sixth Amendment); *Timbs v. Indiana*, 586 U.S. 146, 152-53 (2019) (Eighth Amendment).

gun circuits in the country – the Second and the Ninth. App.Br.60. Thus, “[e]ven though public parks existed well before the Founding and [Defendants] provide no evidence of firearm bans from that time period, [Defendants] divine[] a historical tradition by redefining the inquiry to search for more recent regulations of ‘modern’ parks.” *Carralero v. Bonta*, 125 F.4th 1246, 1258 (9th Cir. 2025) (VanDyke, J., dissenting from denial of rehearing en banc). Gaming the historical time period until you find a favorable analogue is not how *Bruen*’s test works.³³

Of course, the Founding-era historical record resolves this case in Plaintiffs’ favor. Indeed, Boston Common, established in 1634, is considered “the nation’s first city park.”³⁴ In fact, “the *modern playground and recreation-park movement* may fairly be said to have had its beginnings for Americans in Boston.”³⁵ Numerous other sources confirm the Common’s recreational origins. As one scholarly article describes, Boston Common “served as a site for informal socializing and

³³ Indeed, all Defendants prove is that “[h]e who writes the Resolved Clause, wins the debate” (M. Stanton Evans).

³⁴ Margaret Walls, *Parks and Recreation in the United States: Local Park Systems, Resources for the Future* (June 2009), <https://tinyurl.com/ku34nphk>, at 1.

³⁵ *Parks*, 21 Encyclopedia Americana (1919) (emphasis added).

recreation” during the Founding era, including “[s]trolling,” “[h]orse- and carriage riding,” “sports,” “entertainment,” and “raucous celebrations.”³⁶ Even the *U.S. government itself* explains that “the Common was a place for recreation as early as the 1660s.”³⁷ And this “recreation[al]” space was far from a gun-free zone, as guns were never banned and, in fact, the Common commonly hosted militia activities.³⁸

Of course, Boston Common was no anomaly. In New York, City Hall Park began as a “public common[]” in the 17th century.³⁹ New York’s Bowling Green Park likewise was established in 1733.⁴⁰ And nearby Duane Park was the first open space New York City purchased “specifically for use as a public park” *in 1797*.⁴¹ Finally, in the South, urban planners designed Savannah, Georgia around public squares – open green spaces that became the landscaped parks that residents and

³⁶ Anne Beamish, *Before Parks: Public Landscapes in Seventeenth- and Eighteenth-Century Boston, New York, and Philadelphia*, 40 *Landscape J.* 1, 3-6 (2021).

³⁷ *Boston Common*, Nat’l Park Serv., <https://tinyurl.com/ycyjc7dd> (Jan. 16, 2025).

³⁸ Beamish, *supra*, at 3-6.

³⁹ *The Earliest New York City Parks*, NYC Parks, <https://tinyurl.com/3ap4rkch> (last visited Mar. 5, 2026).

⁴⁰ *The Earliest New York City Parks*, *supra*.

⁴¹ *Duane Park Origins*, Hist. Marker Database, <https://tinyurl.com/45k8hpdh> (last visited Mar. 5, 2026).

visitors know today. Indeed, Savannah’s squares started initially as “open, unplanted plazas,” but they were “remodel[ed] ... *around 1800* ... into *landscaped neighborhood parks*.”⁴² There is no question that the Founders had “modern” parks all along, and there is no evidence they ever banned firearms in such places.

At bottom, the Panel correctly applied *Bruen*. It analogized public parks to the historical locations *Bruen* identified, and found no relevant similarity. The Founding-era historical record confirms that Americans always were free to carry in public parks, and this Court should affirm.

b. Polling Centers.

Next, Defendants claim the Parks Statute constitutionally restricts firearms in “civic centers and governmental property used for recreational purposes,” because these “locations are used for polling in Tennessee.” App.Br.62.

But in support, Defendants identify only one historical prohibition dating to 1869, which cannot evince a *national* Founding-era tradition, as discussed. App.Br.62. Moreover, Tennessee does not even prohibit

⁴² See Turpin Bannister, *Oglethorpe’s Sources for the Savannah Plan*, 20 J. of Soc’y of Arch. Hist. 47, 48 (1961) (emphases added).

firearms in polling centers today, unless they are otherwise off-limits (like schools, not at issue here). In other words, Defendants’ appeal to polling centers is entirely inapposite.

c. Recreational Areas for Children.

Finally, Defendants claim that the mere presence of children is “one of the most important factors to consider when assessing whether an area is a sensitive space.” App.Br.63. But if that were true – a factor purportedly so “important” that the Supreme Court never mentioned it – then nearly all public places would be “sensitive.” Of course, *Bruen* already warned not “to effectively declare the island of Manhattan a ‘sensitive place’ simply because it is crowded...” *Bruen*, 597 U.S. at 31. Indeed, even Defendants’ Tennessee case warned that “not ‘all places of public congregation’ are ‘sensitive places.’” *Columbia Hous. & Redevelopment Corp. v. Braden*, 663 S.W.3d 561, 563 (Tenn. Ct. App. 2022); see App.Br.63.

Nor does the concept of disarmament of “vulnerable populations” (App.Br.63) and those around them make any sense. The Supreme Court repeatedly emphasized that “individual self-defense is ‘the *central component*’ of the Second Amendment right.” *Bruen*, 597 U.S. at 29. And

indeed, “[m]any Americans hazard greater danger outside the home than in it.” *Id.* at 33. Exempting the most vulnerable from “the natural right of resistance and self-preservation” – and depriving others of the ability to defend the “vulnerable” – would defeat its purpose entirely. *Heller*, 554 U.S. at 594. The Parks Statute does nothing to stop a meth head on a rampage, but it does stop a mother from having a gun in her purse to defend her children.⁴³ This Court should not endorse such a self-defeating principle here.

III. THE PANEL PROPERLY GRANTED DECLARATORY RELIEF.

Finally, Defendants contest the scope of the Panel’s facial declaratory remedy, urging that relief “must be limited to the parties.” App.Br.66.⁴⁴ First, Defendants characterize the Panel’s declaration as a forbidden form of “universal relief,” because it benefits “other Tennesseans” who are not parties to this case. App.Br.67; App.Br.68.

⁴³ See, e.g., *Children Stabbed in France No Longer in Life-Threatening Condition, Suspect Charged*, PBS News (June 10, 2023), <https://tinyurl.com/2nbea6z2>.

⁴⁴ Curiously, Defendants first claim that “Plaintiffs ... are not” “entitled to *any* relief,” despite admitting that the challenged statutes “are constitutionally problematic” as applied to Plaintiffs’ conduct. App.Br.66 (emphasis added); App.Br.13.

And second, Defendants insist that, for facial relief to flow, the Declaratory Judgment Act requires the joinder of “*all Tennesseans*” – such as through “a class action lawsuit.” App.Br.70 (emphasis added). But Defendants are wrong on both counts, and this Court should affirm the Panel’s declaratory judgment in its entirety.

A. The Panel Did Not Issue “Universal Relief.”

Defendants start with a mischaracterization. They claim that the Panel did not “limit[] relief to the parties,” and instead “issu[ed] an order encompassing all seven million plus residents of Tennessee.” App.Br.69. This “universal relief,” Defendants claim, is precisely the sort of relief the Supreme Court recently rejected in *Trump v. CASA, Inc.*, 606 U.S. 831 (2025). App.67. Not so.

For starters, the Panel did not award relief beyond the named Plaintiffs. Instead, the Panel explicitly “granted” declaratory relief “*to Plaintiffs.*” (VII, 886 (emphasis added).) Of course, a declaration of a statute’s facial unconstitutionality incidentally would benefit others – a point the Panel acknowledged. (VII, 886 (“Tennesseans that are not party to this action may unintentionally benefit from the protection of

their constitutional rights....”).) But that recognition is far from being a “universal” remedy.

Consider courts’ “duty ... to say what the law is.” *Marbury v. Madison*, 5 U.S. 137, 177 (1803). It is hardly a constitutional crisis for a court to declare an unconstitutional law invalid, even broadly. See *Edwards v. Allen*, 216 S.W.3d 278, 291 (Tenn. 2007) (recognizing “that ‘an unconstitutional statute is not a law, does not confer any rights and is void ab initio’”); see also *Tennesseans for Sensible Election L. v. Tenn. Bureau of Ethics & Campaign Fin.*, 2019 Tenn. App. LEXIS 588, at *42 (Tenn. Ct. App. Dec. 12, 2019) (affirming the facial invalidation of campaign finance laws and acknowledging that “this relief extends beyond the circumstances of this particular plaintiff”). 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.” *Morales*, 527 U.S. at 74 (Scalia, J., dissenting). Accordingly, “[c]omplete relief” may “sometimes ‘advantag[e] nonparties,’” but “only incidentally.” *CASA*, 606 U.S. at 851. Such relief “is not synonymous with ‘universal relief.’” *Id.*

Nor are Defendants’ two post-CASA district court cases availing. See App.Br.68. First, *Benjamin v. Oliver*, 800 F. Supp. 3d 1314, 1345 n.12 (N.D. Ga. 2025), noted that “the relief a court can grant a plaintiff mounting a facial versus as-applied challenge is basically the same – an injunction against enforcing the law against the plaintiff or plaintiffs only.” Of course, the Panel issued no injunctive relief,⁴⁵ having previously found that it lacked authority to do so. (VII, 847.) And, with respect to *declaratory* relief, the scope of the available remedy is broader.

Indeed, the Supreme Court has rejected treatment of “requests for injunctive and declaratory relief as a single issue.” *Steffel v. Thompson*, 415 U.S. 452, 463 (1974). Rather, “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). It follows that “[a] state statute may be declared

⁴⁵ (VII, 893 (conceding no one “has been commanded to cease enforcing the statutes”).) Nevertheless, “a declaration of unconstitutionality ... may still ... cut down the deterrent effect of an 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).

unconstitutional *in toto* – that is, incapable of having constitutional applications.” *Steffel*, 415 U.S. at 469.

CASA changed nothing about these longstanding precedents, and certainly did not repudiate the notion of a facial *declaratory* ruling – something the Supreme Court does all the time. *See, e.g., Patel*, 576 U.S. 409. To the contrary, CASA dealt only with federal courts’ “equitable authority” to issue broad injunctions. *CASA*, 606 U.S. at 837. Declaratory judgments, of course, are a different creature entirely. *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.”).

Finally, Defendants’ second post-CASA district court case does not undermine the availability of a facial declaratory judgment, either. *See App.Br.68*. In fact, *Nat’l Educ. Ass’n-N.H. v. N.H. Att’y Gen.*, 2025 U.S. Dist. LEXIS 195238 (D.N.H. Oct. 2, 2025), did not even repudiate the extension of an injunction *to nonparties*. *See id.* at *76 (“CASA

nevertheless acknowledged that district courts possess equitable authority to ‘administer complete relief between the parties,’ which sometimes requires that the express terms of an injunction extend to nonparties.”).

At bottom, the Panel was well within its authority to declare the Going Armed and Parks Statutes facially invalid. And, contrary to Defendants’ misrepresentation, the Panel granted relief *to Plaintiffs*, while any benefits to other Tennesseans are incidental to the court’s grant of “complete relief.” *CASA*, 606 U.S. at 851.

B. The Panel’s Judgment Complies with the Declaratory Judgment Act.

Defendants also complain that the Panel’s grant of declaratory relief “extended beyond the text of the Declaratory Judgment Act....” App.Br.69. Specifically, Defendants first posit that the Act requires “all persons who have or claim any interest which would be affected by the declaration” to be “made parties.” App.Br.70. Thus, Defendants suggest that a facial declaration requires “a class action lawsuit.” *Id.* And second, Defendants claim “[n]on-parties” will be impermissibly “prejudiced” by facial declaratory relief, because the State itself no longer

will be able to “effectuat[e] statutes enacted by representatives of its people’....” *Id.* These arguments range from incorrect to absurd.

First, Defendants are wrong to suggest that the Declaratory Judgment Act requires a class action lawsuit before “all Tennesseans benefit” from a facial declaration. App.Br.70. Defendants cite no authority in direct support, and plenty of cases repudiate that theory.⁴⁶ *See, e.g., Tennesseans for Sensible Election L.*, 2019 Tenn. App. LEXIS 588 (Tenn. Ct. App. Dec. 12, 2019) (affirming facial invalidation of state laws without requiring a class action); *Leech v. Am. Booksellers Ass’n*, 582 S.W.2d 738, 740 (Tenn. 1979) (declaring an “entire Act void” without requiring a class action). Indeed, “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 (Tenn.

⁴⁶ Obviously, Plaintiffs need not join *everyone* who might benefit from a facial declaration. 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.’” *CASA*, 606 U.S. at 851-52. Here too, the Panel’s ruling for Plaintiffs no doubt will benefit others, but that is unavoidable, and the Panel simply recognized that.

Ct. App. Dec. 19, 2002). It certainly stands to reason that nonparties may incidentally benefit if the State cannot “enforce the statute under any circumstances.”

Second, the State is not “prejudiced” or “irreparabl[y] injur[ed]” (App.Br.70) when a court declares an enactment unconstitutional. It is black-letter law that “a ‘State has no interest in enforcing laws that are unconstitutional,’” and “preventing the State from enforcing [the challenged statute] does not irreparably harm the State.” *Pavek v. Simon*, 467 F. Supp. 3d 718, 762 (D. Minn. 2020); *accord FemHealth USA, Inc. v. City of Mount Juliet*, 458 F. Supp. 3d 777, 805 (M.D. Tenn. 2020) (“no substantial harm in preventing city from enforcing ordinance that was likely to be found unconstitutional, as the state has no valid interest in enforcing an unconstitutional ordinance”).

Third, Defendants claim that, “[t]hough only a few State officials were defendants, the chancery [sic] left ‘[n]o government official’ untouched by its judgment.” App.Br.70. But what the Panel *actually* said was that “[n]o government official, or the public for that matter, has a legitimate interest in the enforcement of unconstitutional laws.” (VII, 886.) That is hardly a novel concept, and it certainly does not show that

the Panel sought to bind nonparties. Moreover, Defendants cannot now claim that relief should be somehow limited to “only a few State officials,” when below they asserted that “this is a lawsuit *against the State itself*.” (I, 113.) Since the State is the real Defendant in this case, the Panel’s ruling naturally binds the State and by extension *all its officials*.

The Panel’s declaratory judgment never purported to grant relief to nonparties, and it never purported to bind nonparties. Rather, the Panel merely noted that all Tennesseans benefit from a declaration of facial invalidity – the very same sort of declaration that scores of courts have issued in scores of cases spanning hundreds of years. The scope of the relief granted below complied with Tennessee law, and this Court should affirm.

CONCLUSION

The judgment of the Panel should be affirmed.

Respectfully submitted,

/s/ John I. Harris III
John I. Harris III (#012099)
Schulman, LeRoy & Bennett PC
3310 West End Avenue, Suite 460
Nashville, Tennessee 37203
(615) 244 6670
jharris@slblawfirm.com
Counsel for Appellees

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CERTIFICATE OF COMPLIANCE

This document complies with the requirements of Rule of Appellate Procedure 30(e) and Supreme Court Rule 46 § 3.02 because it is typed in fourteen-point Century Schoolbook font and consists, according to the word-count utility in the software with which it was produced, of 14,953 words.

/s/ John I. Harris III
John I. Harris III (#012099)

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that the foregoing is being filed by the Court's electronic-filing system on March 6, 2026, which is expected to deliver a copy to the following:

Edwin Alan Groves Jr.
Cody N. Brandon
Miranda H. Jones
Office of the Tennessee
Attorney General and Reporter
P.O. Box 20207
Nashville, Tennessee 37202-0207

Alan.Groves@ag.tn.gov
Cody.Brandon@ag.tn.gov
Miranda.Jones@ag.tn.gov

/s/ John I. Harris III