IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI

LEONARD WILSON JR., GUN OWNERS OF AMERICA, INC., GUN OWNERS FOUNDATION, and the STATE OF MISSOURI, Plaintiffs, v. JACKSON COUNTY, MISSOURI, SHERIFF DARRYL FORTE, in his Official Capacity as the Sheriff of Jackson County, Missouri, and MELESA JOHNSON, in her Official Capacity as the Prosecutor of Jackson County, Missouri, Defendants.	)	Civil No.: 4:25-cv-00487-W-BP

PLAINTIFFS' SUGGESTIONS IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS

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INTRODUCTION

Leonard Wilson Jr., Gun Owners of America, Inc. ("GOA"), Gun Owners Foundation ("GOF"), and the State of Missouri (together "Plaintiffs") submit these suggestions in opposition to Defendants' Motion to Dismiss. Defendants assert that, because they have repealed and replaced Ordinance No. 5865 (the "Ordinance") shortly after being sued, "[t]his civil action is now moot." Defendants' Suggestions in Opposition to Plaintiffs' Motion for Preliminary Injunction and Suggestions in Support of Motion to Dismiss ("MTD") at 1, ECF #26.

However, this case is obviously not moot because Plaintiffs are seeking nominal damages. ECF #1, Prayer for Relief ¶ 4. And the U.S. Supreme Court recently reaffirmed that a request for nominal damages prevents a case from being deemed moot. *See Uzuegbunam v. Preczewski*, 592 U.S. 279, 293 (2021). Plus, the doctrine of "voluntary cessation" precludes a finding of mootness here.

Defendants eventually acknowledge that Plaintiffs' request for nominal damages precludes a finding of mootness, and then quickly retreat to challenging Plaintiffs' standing at the time they filed their Complaint. *Id.* at 5. But Plaintiff Wilson has standing because he has "concrete plans" *and* a "specification of when" to purchase an AR-15 and transport it through and into Jackson County. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 564 (1992). And Missouri has suffered a clear sovereign injury because the Ordinance conflicts and interferes with state laws regulating firearms. *Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Barez*, 458 U.S. 592, 601 (1982) (describing sovereign interest standing as emanating from "the exercise of sovereign power over individuals and entities within the relevant jurisdiction—this includes the power to create and enforce a legal code, both civil and criminal").

The Court should deny the motion to dismiss and proceed to the merits.

ARGUMENT

I. PLAINTIFFS' CLAIM FOR NOMINAL DAMAGES PRECLUDES MOOTNESS.

Defendants' mootness argument is obviously wrong because a "claim for nominal damages . . . precludes mootness. . . ." *Sorcan v. Rock Ridge Sch. Dist.*, 131 F.4th 646, 650 (8th Cir. 2025); *see also Felts v. Green*, 91 F.4th 938, 941 (8th Cir. 2024) ("[T]he availability of nominal damages is enough to stave off mootness.") (quoting *Cardiovascular Sys., Inc. v. Cardio Flow, Inc.*, 37 F.4th 1357, 1362 (8th Cir. 2022)). Indeed, the U.S. Supreme Court explicitly considered and reaffirmed this point in *Uzuegbunam v. Preszewski*, 592 U.S. 279 (2021).

Here, Plaintiffs sought nominal damages. *See* ECF #1, Prayer for Relief ¶ 4. Thus, the case is not moot. *See Uzuegbunam*, 592 U.S. at 801–02; *cf.* ECF #1 at 37–40 (alleging violations of constitutional rights). Defendants ultimately admit as much. *See* MTD at 4. The Court can and should deny Defendants' Motion to Dismiss on this basis alone.

II. PLAINTIFFS' CLAIMS FOR DECLARATORY AND INJUNCTIVE RELIEF ARE NOT MOOT.

Nominal damages aside, Plaintiffs' claims for injunctive and declaratory relief are not moot. Defendants' lead dismissal argument is that "Plaintiffs' claims are moot" because the challenged ordinance was repealed and replaced. MTD at 3 (asserting without support that it is unlikely that Defendants will reoffend in the near future); *see also* ECF #26-1. But Defendants cannot prove mootness–their burden to prove–under the voluntary cessation doctrine.[1]

Defendants respond by claiming special privilege. They claim that "governmental entities and officials have considerably more leeway than private parties in the presumption that they are

[1] Simply repealing the challenged ordinance–for now–demonstrates nothing about the likelihood that Defendants (or their successors) will reoffend in short order, or "later at some more propitious moment." *FBI v. Fikre*, 601 U.S. 234, 243 (2024) (citing *West Virginia v. Environmental Protection Agency*, 597 U.S. 697, 719 (2022)). https://tinyurl.com/ye2re8ty

unlikely to" reoffend. *Id.* But the Supreme Court allowed no such "leeway" in its recent mootness decisions. *See Uzuegbunam*, 592 U.S. at 284 (2021) (declining to moot a case when government "officials quickly abandoned th[eir] strategy and instead decided to get rid of the challenged policies"). Nor can governmental "leeway" be squared with the Supreme Court's latest pronouncement that the mootness standard "holds for governmental defendants no less than for private ones." *FBI v. Fikre*, 601 U.S. 234, 241 (2024). But even if *Fikre* had never been decided, and the Eighth Circuit's pre-*Fikre* cases still controlled, those cases stood for the proposition that the standard was only "*slightly* less onerous when it is the government that has voluntarily ceased the challenged conduct." *Prowse v. Payne*, 984 F.3d 700, 703 (8th Cir. 2021) (emphasis added). Defendants simply cannot invoke "leeway" as a talisman to shirk their "heavy burden" to demonstrate mootness here. *Felts*, 91 F.4th at 941.

Rather, it is "well settled that 'a defendant's voluntary cessation of a challenged practice does not deprive a federal court of its power to determine the legality of the practice.'" *Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 189 (2000) (quoting *City of Mesquite v. Aladdin's Castle, Inc.*, 455 U.S. 283, 289 (1982). A defendant's cessation of challenged conduct "will moot a case only if the defendant can show that the practice cannot 'reasonably be expected to recur." *FBI v. Fikre*, 601 U.S. at 241 (2024); *cf.* MTD at 3 (demanding "more leeway" for the government). This "formidable standard" (*Fikre*, 601 U.S. at 243) is met "only if" the government's showing makes it "absolutely clear" that its conduct will not recur. *Adarand Constructors, Inc. v. Slater*, 528 U.S. 216, 222 (2000) (per curiam) (quoting *U.S. v. Concentrated Phosphate Export Ass'n., Inc.*, 393 U.S. 199, 203 (1968)). Importantly, mootness is a "defendant's 'burden to establish.'" *Fikre*, 601 U.S. at 243. The Eighth Circuit likewise has explained the "heavy burden of persuading the court that the challenged conduct cannot reasonably

be expected to recur lies with the party asserting mootness." *Felts*, 91 F.4th at 941. Finally, and as applicable here, "[w]hat matters is not whether a defendant repudiates its past actions, but what the defendant can prove about its future conduct." *Fikre*, 601 U.S. at 244.

But Defendants have proved *nothing* about their future conduct. As Plaintiffs noted (*see* ECF ##1, 10), the Jackson County Legislature enacted the challenged Ordinance—over an initial veto—specifically to "challenge[] the preemption laws put on by the state," and "hoping for a court battle."[2] Only now do Defendants backtrack, barely a month into the "court battle" of their own choosing. And at no point do Defendants disavow the challenged Ordinance, or concede that it was unlawful and unconstitutional in the first place. Thus, when "the government . . . speaks out of both sides of its mouth, no one should be surprised if its latest utterance isn't the most convincing one." *Bittner v. United States*, 598 U.S. 85, 97 n.5 (2023). Defendants' repeal of their Ordinance just weeks after being sued reeks of voluntary cessation.

Nor does such equivocation make it "absolutely clear" that the same or similar ordinance will not be reenacted. *See Friends of the Earth*, 528 U.S. at 190; *see also Hamilton v. Bromley*, 862 F.3d 329, 335 (3d Cir. 2017) (emphasis added) (no mootness when "the defendant voluntarily ceases an allegedly illegal practice *but is free to resume it at any time*") (quoting *Chong v. Dist. Dir., INS*, 264 F.3d 378, 384 (3d Cir. 2001)); *United Food & Com. Workers Int'l Union v. IBP, Inc.*, 857 F.2d 422, 429 (8th Cir. 1988) ("'a hesitant, qualified, equivocal and discretionary present intention not to prosecute'" means that "the state's position could well change") (citations omitted). Defendants' brief is the model of equivocation, and a new ordinance reinstituting the challenged provisions could be enacted at any time.

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Also consider the timing of Defendants' voluntary cessation. As Defendants acknowledge, "the ordinance was in effect for less than a year" (MTD at 1). But then, suddenly, its repeal and replacement was initiated just over a month into this lawsuit. Courts often "consider whether the change in policy or conduct appears to be the result of substantial deliberation or simply an attempt to manipulate jurisdiction," and "[t]iming plays a role in . . . assessing this factor." *Lawson v. Dep't of Corr.*, 2015 U.S. Dist. LEXIS 175172, at *15 (N.D. Fla. Sept. 30, 2015); *accord Mickelsen Farms, LLC v. Animal & Plant Health Insp. Servs.*, 2018 U.S. Dist. LEXIS 48136, at *26 (D. Idaho Mar. 20, 2018) ("timing of the voluntary cessation is a factor"); *see also Speech First, Inc. v. Schlissel*, 939 F.3d 756, 769 (6th Cir. 2019) ("The timing of the University's change also raises suspicions that its cessation is not genuine."). Defendants ceased their challenged conduct soon after being sued, and this Court should presume that this lawsuit was the reason why.

Finally, Defendants' refusal to disavow the challenged Ordinance bears further emphasis. The Supreme Court has explained that "a party's repudiation of its past conduct" can "help demonstrate that conduct is unlikely to recur." *Fikre*, 601 U.S. at 244. Indeed, "abandonment is an important factor. . . ." *City of Mesquite*, 455 U.S. at 289. Thus, various courts have considered such evidence when examining the likelihood of offending "future conduct." *See Porter v. Clarke*, 852 F.3d 358, 360 (4th Cir. 2017) ("Defendants repeatedly have refused to rule out a return to the challenged policies."); *Tucker v. Gaddis*, 40 F.4th 289, 293 (5th Cir. 2022) ("the government has not even bothered to give . . . any assurance that it will permanently cease engaging in the very conduct that [is] challenge[d]"). In fact, "[i]t has long been recognized that the likelihood of recurrence of challenged activity is more substantial when the cessation is not based upon a recognition of the initial illegality of that conduct." *Armster v. U.S. Dist. Ct.*, 806 F.2d 1347, 1359

(9th Cir. 1986) (citing *Walling v. Helmerich & Payne, Inc.*, 323 U.S. 37, 43 (1944)). Defendants have accepted no such responsibility here.

Recently, the Supreme Court refused to dismiss a case where "'[t]he only conceivable basis for a finding of mootness . . . is [the respondent's] voluntary conduct,'" and "the Government 'nowhere suggests that if this litigation is resolved in its favor it will not' reimpose" the challenged action." *West Virginia v. EPA*, 597 U.S. at 719–20; *see also Aladdin's Castle*, 455 U.S. at 289 (case not moot where government's "repeal of the objectionable language would not preclude it from reenacting precisely the same provision if the" case were dismissed). Beyond claiming that some "Jackson County officials opposed the original ordinance" and noting that the amended ordinance "passed with broad support with no noted disagreements" (MTD at 3), at no point do Defendants explain *why* the first Ordinance was wrong, or expressly disclaim its content or an intention to reenact it in the future. Had Defendants wished to admit wrongdoing, they certainly know how. Defendants' refusal to disavow their prior actions further demonstrates voluntary cessation, and this case is not moot.

III. PLAINTIFFS CLEARLY HAVE STANDING.

Unable to prove mootness, Defendants shift gears to deny that any Plaintiff had standing when the suit was filed, on the theory that Plaintiffs failed to allege an injury-in-fact. Specifically, Defendants (i) note that the individual, organizational, and governmental Plaintiffs do not reside within Jackson County; (ii) claim that Plaintiffs were not "subject to" the Ordinance; and (iii) characterize Plaintiffs' allegations as mere "someday" intentions. MTD at 4–5. Defendants' argument fails on all fronts.

A. The Individual and Organizational Plaintiffs Have Article III Standing.

Plaintiffs clearly were "subject to" the challenged Ordinance, and they alleged their harms with great specificity. Plaintiff Leonard Wilson Jr. is an adult under the age of 21 who wished to purchase a handgun and handgun ammunition from his uncle, who resides in Jackson County, and who had agreed to sell those items to him. *See* Declaration of Leonard Wilson Jr., ECF #1-2, ¶¶ 1-2, 7-9; *see also* ECF #1, ¶¶ 18-21. Specifically, Wilson and his uncle agreed to the sale of a "Canik TP9 handgun, along with ammunition for the firearm, for $300," which would take place "the next time [Wilson] visit[ed] him and his family" in Jackson County, "within the next month or two." ECF #1-2, ¶¶ 8, 9. This was not some one-off visit. Rather, Wilson "often visit[s]" his uncle, "often stay[s] overnight, and at times for multiple days" at a time. *Id.* ¶ 3. And during these visits, Wilson and his uncle "routinely" shoot together at a nearby Jackson County range. *Id.* ¶ 4. These allegations represent specific allegations about repetitive behavior—not some speculative course of conduct.

Wilson described his desired purchase of an AR-15-style rifle with the same degree of specificity. Indeed, Wilson "plan[ned] to make such a purchase within the next three months," and then again "within the next 12-18 months." ECF #1-2, ¶¶12, 15. And once he acquired these rifles, Wilson explained that he would, but for the challenged Ordinance, "transport them through Jackson County," "possess them within Jackson County," and "shoot them (at the range) within Jackson County, during [his] visits to [his] uncle's home." *Id.* ¶16.

Wilson clearly had standing to challenge the Ordinance under those facts.[3] Jurisdiction "is tested by the facts as they existed when the action is brought," *Smith v. Sperling*, 354 U.S. 91, 93

[3] Accordingly, Plaintiffs Gun Owners of America, Inc. ("GOA") and Gun Owners Foundation ("GOF") derivatively have standing, on behalf of Wilson and other similarly situated members and supporters. *See* ECF #1-2, ¶2; Declaration of Erich M. Pratt, ECF #1-3, ¶16; *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 563 (1992). Indeed, "a single member with standing in his or her own

n.1 (1957) (citations omitted), and at the time Plaintiffs sued, the challenged Ordinance clearly prohibited Wilson from engaging in his then-impending course of conduct.[4] Nothing more was needed for Wilson to challenge the Ordinance. Indeed, the Ordinance caused legal injury the moment Wilson desired and intended to purchase and possess firearms he could not. His planned—and specifically negotiated—transaction with his uncle could not occur, because the Ordinance made it unlawful.

Defendants do not engage with any of these specific facts. Instead, they cast all of Plaintiffs' allegations aside as "someday" intentions. MTD at 5. But this Circuit explains that "someday" allegations are "nebulous assertion[s]" that lack "any description of concrete plans, or indeed even any specification of *when* the some day will be. . . ." *Nomi v. Regents of Univ. of Minn.*, 5 F.3d 332, 334 (8th Cir. 1993) (quoting *Lujan*, 504 U.S. at 564). In stark contrast here, Wilson described the 'who, what, where,' and even '*when*' of his plans in detail. His plans were as concrete as can be. *Cf. Tandy v. City of Wichita*, 380 F.3d 1277, 1284–85 (10th Cir. 2004) ("Allen's averred intent to use Wichita Transit's buses 'several times per year' is not a mere

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right is sufficient to establish that an organization has standing." *Equal Means Equal v. Dep't of Educ.*, 450 F. Supp. 3d 1, 5 (D. Mass. 2020). And although not a "traditional" membership organization, courts have found GOF to possess the "indicia of membership" under *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333 (1977), for purposes of representing its supporters' interests in litigation such as this. *See, e.g.*, *Texas v. BATFE*, 737 F. Supp. 3d 426, 438 (N.D. Tex. 2024). And in any case, "the presence of one party with standing is sufficient to satisfy Article III's case-or-controversy requirement." *Elder v. Gillespie*, 54 F.4th 1055, 1063 (8th Cir. 2022).

[4] It is black-letter law that a "plaintiff need not 'first expose himself to actual arrest or prosecution to be entitled to challenge [the] statute' … when fear of criminal prosecution under an allegedly unconstitutional statute is not imaginary or wholly speculative," even if a "criminal penalty provision has not yet been applied...." *Babbitt v. UFW Nat'l Union*, 442 U.S. 289, 301 (1979); *see also id.* at 302-03 (standing lies when statute "authorizes imposition of criminal sanctions against" violators). Thus, "Damocles's sword does not have to actually fall … before the court will issue an injunction," *League of Women Voters of the U.S. v. Newby*, 838 F.3d 1, 9 (D.C. Cir. 2016), and "where threatened action by government is concerned, we do not require a plaintiff to expose himself to liability before bringing suit...." *MedImmune, Inc. v. Genentech, Inc.*, 549 U. S. 118, 128-29 (2007).

'someday intention,'" and so "Allen has established an injury in fact that is sufficiently impending to support standing to seek prospective relief."); *Antonyuk v. James*, 120 F.4th 941, 1015 (2d Cir. 2024) (finding standing to challenge a firearm ban in zoos when a plaintiff "frequently visit[s]" the zoo "at least once or twice every fall," and "would 'visit the zoo this fall as well, at least once, within the next 90 days'").

At bottom, all Plaintiffs had standing when the lawsuit was filed. Wilson faced arrest, risk of confrontation with law enforcement, prosecution, and potential jail time should he have exercised his Second Amendment rights in violation of the terms of the Ordinance. ECF #1, ¶¶ 21, 25. And GOA and GOF's members and supporters, like Wilson, faced arrest and prosecution for violations of an unconstitutionally vague Ordinance. *Id.* ¶¶ 27, 28. Defendants have said nothing that diminishes Plaintiffs' clear standing.

B. Missouri Has Article III Standing.

The State of Missouri has Article III standing on two independently sufficient grounds. First, Missouri has standing based on its sovereign interest because Missouri law *explicitly* and *expressly* preempts the field of firearm regulation statewide. Mo. Rev. Stat. § 21.750. Second, Missouri has *parens patriae* standing.

First, the State has sovereign-interest standing because the Ordinance is expressly preempted by Missouri's firearm preemption statute. Mo. Rev. Stat. § 21.750. As this Court recently stated, "a state may have sufficient standing to satisfy Article III based on a sovereign interest that 'involves [the state's] power to create and enforce a legal code, both civil and criminal." *Wyatt Bury, LLC v. City of Kansas City*, 2025 WL 2798569, at *12 (W.D. Mo. July 10, 2025) (quoting *Snapp*, 458 U.S. at 601). Here, the preemption is so clear—and the Ordinance's conflict with a preemptive state statute is so obvious—that Missouri's sovereign interest is

undeniable. Section 21.750 "occupies and preempts the entire field of legislation touching in any way firearms, components, ammunition and supplies to the complete exclusion of any order." Mo. Rev. Stat. § 21.750. Missouri shows that it has suffered an "injury in fact that is concrete, particularized, and actual or imminent . . . likely caused by the defendant" and "would likely be redressed by judicial relief." *TransUnion LLC v. Ramirez*, 594 U.S. 413, 423 (2021) (citing *Lujan*, 504 U.S. at 560–61).

This Court reiterated that "federal courts generally construe this kind of sovereign injury (for constitutional standing purposes) as arising when 'the acts of the defendant . . . invade the government's sovereign right [to exercise sovereign power over individuals and entities within its jurisdiction] resulting in some tangible interference with [the state's] authority to regulate or to enforce its laws.'" *Wyatt Bury*, 2025 WL 2798569, at *12 (quoting *Harrison v. Jefferson Parish Sch. Bd.*, 78 F.4th 765, 770 (5th Cir. 2023)). Here, Jackson County is "invad[ing]" Missouri's "sovereign right" to legislate and enforce state law.

Second, Missouri has *parens patriae* standing. The "doctrine of *parens patriae* allows a sovereign to bring an action on behalf of the interest of all of its citizens." *United States v. Santee Sioux Tribe of Neb.*, 254 F.3d 728, 734 (8th Cir. 2001) (citing *Louisiana v. Texas*, 176 U.S. 1, 19 (1900)). Missouri "has a quasi-sovereign interest in the health and well-being—both physical and economic—of its residents in general" and "a quasi-sovereign interest in not being discriminatorily denied its rightful status within the federal system." *Wyatt Bury*, 2025 WL 2798569, at *9 (quoting *Snapp*, 458 U.S. at 607). Additionally, Missouri's interest is not "wholly derivative" of the other parties' interests. *Id.* at *11 (quoting *Paxton v. Dettelbach*, 105 F.4th 708, 715–16 (5th Cir. 2024)). In contrast here, the Ordinance usurps the plenary lawmaking authority of the General Assembly *and* causes an injury to "a sufficiently substantial segment of its population" through penalties

subjecting Missourians—not merely those resident in Jackson County—to an unconstitutional Ordinance. *Id.* at *10. Furthermore, the penal nature of the Ordinance and convictions trigger other obligations for Missouri. The Ordinance imposes enforcement responsibilities upon the State and Missourians statewide, ranging from litigation to detention expenditures.

Bizarrely, Defendants do not dispute any of these points. Instead, they apparently think the Attorney General is suing in her capacity as a private citizen. MTD at 4 (discussing where Attorney General resides). That is wrong; the Attorney General is representing the State of Missouri as a plaintiff. Complaint at *8. Consequently, Defendants have provided precisely zero reasons that Missouri lacks standing to pursue this case.

CONCLUSION

For the foregoing reasons, Defendants' Motion to Dismiss should be denied.

Date: December 8, 2025

Respectfully submitted,
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CERTIFICATE OF SERVICE AND COMPLIANCE

I, Louis J. Capozzi III, hereby certify that I have on this day, caused the foregoing document or pleading to be filed with this Court's CM/ECF system, which generated a Notice of Electronic Filing and provided a copy of the foregoing document or pleading to all counsel of record, consistent with Federal Rule of Civil Procedure 5(b).

I further certify that the foregoing document contains 11 pages, excluding exempted parts.

Dated: December 8, 2025

/s/ Louis J. Capozzi III.
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