**IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE**
**28TH JUDICIAL DISTRICT, GIBSON COUNTY**

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| STEPHEN L. HUGHES, DUNCAN O'MARA, ELAINE KEHEL, GUN OWNERS OF AMERICA, INC., and GUN OWNERS FOUNDATION, | ) | |
| Plaintiffs, | ) | |
| v. | ) | No. 24475 |
| BILL LEE, in his official capacity as the Governor for the State of Tennessee, et al., | ) | Chancellor Mansfield, Chief Judge<br>Judge Burk<br>Judge Rice |
| Defendants. | ) | |

**PLAINTIFFS' RESPONSE IN OPPOSITION TO STATE DEFENDANTS' MOTION FOR STAY OF JUDGMENT PENDING APPEAL**

## INTRODUCTION

Plaintiffs filed this action to challenge the constitutionality of two of Tennessee's gun control statutes. The parties[1] filed cross-motions for summary judgment. On August 22, 2025, this Court granted summary judgment to Plaintiffs upon finding that the challenged statutes are facially unconstitutional. On September 2, 2025, the state Defendants filed an appeal. The state Defendants also filed a motion in this Court seeking a stay of the Court's ruling pending the state's appeal. Plaintiffs oppose the state Defendants' motion for stay.

[1] Defendant Sheriff Paul Thomas did not participate in the cross-motions for summary judgment as a result of a joint Stipulation entered September 19, 2023, which stipulation waived his right to file an answer or dispositive pleadings in this action and in which he consented to the court's final disposition in this action. Sheriff Thomas has not appealed from this Court's ruling.

## LEGAL STANDARD

In Tennessee, "questions of stay or continuance are matters entrusted to the sound discretion of the trial judge." *Sanjines v. Ortwein & Assocs., P.C.*, 984 S.W.2d 907, 909 (Tenn. 1998). Defendants cite to *Nken v. Holder*, 556 U.S. 418, 434 (2009) for the stay analysis that federal courts apply: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." Here, factors two and four "merge when the Government is the opposing party." *Nken,* 556 U.S. at 435.

But while Defendants articulate the correct standard, they omit key considerations. For example, "[a]lthough the factors to be considered are the same for both a preliminary injunction and a stay pending appeal, the balancing process is not identical due to the different procedural posture…." *Michigan Coalition of Radioactive Material Users, Inc. v. Griepentrog*, 945 F.2d 150, 153 (6th Cir. 1991). Thus, because "a motion for a stay pending appeal is generally made after the district court has considered fully the merits," a party seeking a stay pending appeal "will have greater difficulty in demonstrating a likelihood of success…." *Id.* All told, a stay pending appeal is an "extraordinary form of equitable relief." *Sarkisov v. Bondi*, 138 F.4th 976, 979 (6th Cir. 2025). Defendants do not even begin to meet their burden to justify a stay here.

## ARGUMENT

Despite acknowledging the "hard to miss ... constitutional infirmities" of the laws this Court recently declared unconstitutional, and despite conceding that "this Court entered no injunction," Defendants nevertheless demand that this Court "immediately" stay its order issued August 22, 2025. On the contrary, no stay is warranted, for a number of reasons.

**This Court's Opinion Was a Proper Exercise of Judicial Power.** For starters, and most importantly, this Court's decision was eminently correct. Defendants bluster that this Court acted "without regard for ... the people's elected representatives" and "refus[ed] to adhere to ... judicial limits" in its "haste to erase statutory provisions...." Motion for Stay of Judgment Pending Appeal ("Mot. Stay") at 2, 4. But nothing could be further from the truth. Rather, this Court simply "sa[id] what the law is"[2] – that Tennessee law improperly "criminaliz[ed] ... the constitutional right to bear arms." Order on the Parties' Cross-Motions for Summary Judgment ("Op.") at 31. It is hardly a constitutional crisis (Mot. Stay at 4) for a court to declare an unconstitutional law invalid.

Similarly, Defendants are simply wrong that this Court's decision "erase[d]" Tennessee law "in its entirety," through "deletion of statutory language." Mot. Stay 1-2. That claim is difficult to square with this Court's opinion, which simply "declared unconstitutional, void, and of no effect" a statute Defendants *admit* is unconstitutional. Op. at 42. Indeed, "[c]ourts hold laws unenforceable; they do not erase them." *Pool v. City of Houston*, 978 F.3d 307, 309 (5th Cir. 2020). *See also Arizona v. Biden*, 40 F.4th 375, 396 (6th Cir. 2022) (Sutton, C.J. concurring) ("we do not remove – 'erase' – from legislative codes unconstitutional provisions."). Again, this Court's simple declaration of constitutional infirmity is no constitutional coup d'état.

**Facial Invalidation Was Appropriate.** Next, Defendants theorize that this Court "invented a new test for facial challenges" (Mot. Stay at 2-3) when it found no "plainly legitimate sweep" to a statute which "proscrib[es] in toto, subject to narrow exceptions..., the right to bear arms." Op. 31. In other words, Defendants' position is that a law which facially criminalizes a constitutional right is nevertheless salvageable on the basis of theoretical constitutional applications at its fringes – like carrying hand grenades in public.

[2] *Marbury v. Madison*, 5 U.S. 137 (1803).

But yet despite acknowledging (Mot. Stay at 1) the applicability of *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022), Defendants conveniently overlook that the statute in that case was struck down *on its face*. Indeed, the Supreme Court had no trouble with a *facial* challenge to a statute that conditioned the exercise of an enumerated right on a discretionary showing to bureaucrats – "proper cause" (*id.* at 12) – even though Defendants might have argued there was the potential for constitutional application of the law – such as denying a permit applicant who desired to obtain a firearm in order to commit murder. Likewise, *District of Columbia v. Heller*, 554 U.S. 570 (2008), *facially* invalidated a blanket "prohibition on the possession of usable handguns in the home" (*id.* at 573), even though Defendants no doubt would claim that no ten-year-old possesses such a right. In other words, the Supreme Court's Second Amendment cases demonstrate that Defendants are tilting at windmills.

Nor is this Court's reasoning the anomaly Defendants seem to believe. Recently, the Supreme Court of Pennsylvania similarly explained that "the fact that certain circumstances might avert an unconstitutional application of the statute does not insulate it from a determination of facial unconstitutionality." *Commonwealth v. Shifflett*, 2025 Pa. LEXIS 805, *34 (Pa. 2025). The Sixth Circuit agrees, explaining that facial invalidation "is the fate some laws deserve – either because the defect in the law infects all or virtually all of its applications ... or because the constitutional problems cannot meaningfully be severed." *Connection Distrib. Co. v. Holder*, 557 F.3d 321, 335 (6th Cir. 2009). Defendants, having admitted that there "are unconstitutional applications of these statutes" (Mot. Stay p. 5), offer no guidance as to how this Court could blue

pencil[3] the statute to allow for a few purportedly constitutional applications, while striking it down as to virtually all other scenarios.[4]

Indeed, the Supreme Court itself has rejected the very sort of argument Defendants make here. In *City of Los Angeles, Calif. v. Patel*, 576 U.S. 409 (2015), Los Angeles argued that there might be a few constitutional applications (like emergencies) of its broad warrantless searches, and so no facial challenge to its ordinance could succeed. Disagreeing, the Court held that such "logic would preclude facial relief in every Fourth Amendment challenge to a statute authorizing warrantless searches." *Id.* at 894. *See also Lozano v. City of Hazleton*, 724 F.3d 297, 313 n.22 (3d Cir. 2013) (rejecting the notion that a facial challenge cannot succeed "whenever a defendant can conjure up just one hypothetical factual scenario in which implementation of the state law would not directly interfere with federal law."); *United States v. Supreme Court*, 839 F.3d 888, 917 (10th Cir. 2016) ("A facial challenge is best understood as 'a challenge to the terms of the statute, not hypothetical applications,' ... and is resolved 'simply by applying the relevant constitutional test

[3] And for good reason. "Under Tennessee law, severance of unconstitutional portions of a statute is generally disfavored… 'Tennessee law permits severance only when *it is made to appear from the face of the statute* that the legislature would have enacted it with the objectionable features omitted[.]'" *Thomas v. Schroer*, 2017 U.S. Dist. LEXIS 222489, at *9 (W.D. Tenn. Sep. 20, 2017) (cleaned up, citations omitted). No such self-evidence is found in the statute here, which broadly criminalizes the bearing of arms. As the Sixth Circuit explains, "the Court is 'wary of legislatures who would rely on our intervention,' because where states merely cast as wide a net as possible and leave it to the courts to determine the permissible extent of a statute's reach, they run the risk of delegating legislative authority to the judiciary." *Northland Family Planning Clinic, Inc. v. Cox*, 487 F.3d 323, 333-34 (6th Cir. 2007) (citation omitted).

[4] Defendants opine that this Court's opinion requires them "to prove the statutes are constitutional in every application." Mot. Stay at 3. On the contrary, Defendants must show a "plainly legitimate sweep" – *i.e.*, something more than just fringe constitutionality in some remote hypothetical scenario they dream up. Here, like in *Bruen* and *Heller*, the invalidated law prevents ordinary law-abiding Americans ("the people") from doing ordinary things ("bear[ing] arms") with ordinary firearms ("arms"). It is unconstitutional on its face.

to the challenged statute without attempting to conjure up whether or not there is a hypothetical situation in which application of the statute might be valid....'").

Defendants' parade of horribles are just that – hypotheticals. Defendants posit that "a ten-year-old [now can] bring[] a semi-automatic rifle to his rec league basketball game." Mot. Stay. at 2; *see also* at 5. Of course, federal law prohibits minors from obtaining firearms from dealers (18 U.S.C. § 922(b)(1)), and Tennessee law likewise prohibits the sale of a firearm to a minor. Tenn. Code Ann. § 39-17-1303. Defendants also speculate that an armed drunk person might "stumble through a crowd" in public places. Mot. Stay at 2, 5. But they admit that the law already prohibits intoxicated handgun carry, § 39-17-1321(a), not to mention that guns are prohibited when drinking in an alcohol-serving establishment, § 39-17-1321(b), and Tennessee also criminalizes disorderly conduct, § 39-17-305, which certainly would include a drunk "creat[ing] a hazardous ... condition ... in a public place."[5]

In other words, there are numerous laws already on the books to prevent Defendants' "whataboutisms" – a "'fallacy [that] ignores the question and switches the subject to something else.'" *United States v. Jones*, 2021 U.S. App. LEXIS 37158, at *9 n.3 (9th Cir. Dec. 16, 2021) (Baker, J., dissenting). Of course, "[w]hataboutism … is not an argument." *League of Women Voters of Fla. v. Lee*, 2022 U.S. Dist. LEXIS 37991, at *42 (N.D. Fla. Jan. 4, 2022).[6]

[5] Defendants speculate about how this Court's invalidation of the Going Armed statute will affect all manner of tangential issues: (1) carrying dangerous and unusual weapons, (2) carrying in schools, government buildings, and polling places, (3) carry by felons, and (4) going armed 'to the terror of the people." Mot. Stay at 5. But Defendants "misunderstand[] how courts analyze facial challenges" – courts "consider[] only applications of the statute in which it actually authorizes or prohibits conduct." *City of Los Angeles v. Patel*, 576 U.S. 409, 418 (2015).

[6] Defendants note that the General Assembly has enacted statutory provisions dealing with children with *handguns*, but not *long guns*. Stay Mot. at 5 (referencing § 39-17-1319(b)). From this, Defendants infer that the General Assembly intended to "rely[] on the Going Armed statute" to prohibit *long gun* possession by children. *Id*. But that is a *non sequitur*. The Going Armed statute

**A Declaration of Unconstitutionality Is Not Prohibited "Universal Relief."** Defendants next hyperbolize that this Court "exceeded the constitutional bounds of judicial power" by "deliver[ing] universal relief." Mot. Stay at 3. Of course, Defendants admit that no injunction was issued. *Id.* at 4. Nevertheless, they appear to believe that a court's mere *declaration* of facial invalidity constitutes "universal relief," and that this Court instead should have struck down the law on its face – but only "with respect to particular plaintiffs" – whatever that means. *Id.* at 3. On the contrary, even if "plaintiffs asserted only an as-applied challenge, the court still would have been permitted to award relief that extended beyond the named plaintiffs." *Fisher v. Hargett*, 604 S.W.3d 381, 397 (Tenn. 2020).

Indeed, "[w]hen a facial challenge is successful, the law in question is declared to be unenforceable in all its applications, and not just in its particular application to the party in suit." *City of Chi. v. Morales*, 527 U.S. 41, 74 (1999) (Scalia, J., dissenting). The Supreme Court's recent decision in *Trump v. CASA, Inc.*, 145 S. Ct. 2540, 2544 (2025), did not invalidate this notion of a facial declaratory ruling. Indeed, the "Court does not normally overturn, or so dramatically limit, earlier authority *sub silentio*." *Shalala v. Ill. Council on Long Term Care*, 529 U.S. 1, 18 (2000). Rather, *CASA* involved nothing more than federal courts' "equitable authority" under Judiciary Act of 1789 "to issue universal injunctions" for and against entities and persons who are not parties to a case. *Id.* at 2550. But Defendants readily concede that no injunction issued here. Mot. Stay. at

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excepts handgun possession only by those over the age of 18. § 39-17-1307(g). In other words, the Going Armed statute *already* prohibited children from carrying handguns – even without § 39-17-1319(b). Thus, it is not reasonable to impute motive to the General Assembly in the way Defendants do. In any event, to the extent there is a need for further *constitutional* enactments after this Court's opinion, the General Assembly is free to act at any time. *See Thomas*, 2017 U.S. Dist. LEXIS 222489, at *15-16 ("it is for the Tennessee State Legislature—and not this Court—to clarify the Legislature's intent…"); *see also Patel*, 558 U.S. at 365 ("reliance interests" by "Legislatures … is not a compelling interest for *stare decisis.* If it were, legislative acts could prevent us from overruling [bad law], thereby interfering with our duty 'to say what the law is.'").

4 (conceding that *no one* "has been commanded to cease enforcing the statutes"). And *CASA* is not the sweeping repudiation of courts' declaratory judgment powers Defendants apparently believe it to be. Again, this Court's order merely declares certain provisions of Tennessee law to be unconstitutional. That is hardly unprecedented. *See Bruen*, 597 U.S. at 71 ("New York's proper-cause requirement violates the Fourteenth Amendment"). Statements by Plaintiffs' *counsel* (Mot. Stay at 4) about the *practical effects* of a court's ruling on other state officials does not change the calculus.

At bottom, Defendants do not focus on the *substance* of this Court's ruling – in fact, they agree the statutes at issue are unconstitutional. Mot. Stay at 1, 5. Rather, they focus on the *scope* of this Court's ruling. But that is not a showing upon which Defendants are "likely to succeed on the merits." *Nken*, 556 U.S. at 434. And it is no justification for a stay.

**The Equitable Factors Support Plaintiffs.** Failing to meet their burden to show a likelihood of success on the merits, Defendants do not even begin to meet the other elements required for a stay. First, they claim that there is "widespread uncertainty" from this Court's order. Mot. Stay at 4. But other than providing a link to a statement by Plaintiffs' counsel, Defendants do not explain what this rampant uncertainty is, much less provide any *evidence* that public officials are confused. On the contrary, this Court's declaration could not have been clearer – Tennessee's Going Armed Statute and Parks Statute violate the Second Amendment.

Defendants next wring their hands that government officials will be "loath" to undertake enforcement actions which conflict with this Court's order. Mot. Stay at 4. But law enforcement *compliance* with judicial authority is hardly some grave public harm. On the contrary, "the public is certainly interested in the prevention of enforcement of ordinances which may be unconstitutional." *Planned Parenthood Asso. v. Cincinnati*, 822 F.2d 1390, 1400 (6th Cir. 1987).

Defendants' invocation of some talismanic "duty to protect the public" (Mot. Stay at 4) does not trump their duty to respect constitutional rights. *See G & V Lounge v. Mich. Liquor Control Comm'n*, 23 F.3d 1071, 1079 (6th Cir. 1994) ("it is always in the public interest to prevent the violation of … constitutional rights.").

Next, Defendants reiterate their parade of horribles, speculating that children and drunks will turn Tennessee into "Shiloh circa 1862." Mot. Stay at 5. In other words, Defendants anticipate 24,000 casualties in two days.[7] But Defendants offer no evidence to support their absurd sensationalism, even though this Court issued its order weeks ago. In *Bruen*, Justice Alito questioned whether gun laws would stop criminals "bent on carrying out" crimes, and pointed to evidence that in fact the opposite is true – *i.e.*, that criminals will act regardless of how many laws are on the books. *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 72 (2022) (Alito, J., concurring). Defendants offer nothing to support any other conclusion.

Lastly, Defendants offer the unsupported *ipse dixit* that Plaintiffs "will not be prejudiced by a stay pending appeal," noting that it "took two years to bring this case to summary judgment…"[8] Mot. Stay at 6. But if that were the standard for a stay, then every appellant who engaged in the ordinary course of litigation – and lost – would be entitled to a stay. That is not the law. Plus, of course, Plaintiffs do face serious risk of harm if this Court's judgment is stayed. Plaintiffs run the risk of stop, detention, arrest and prosecution, not only by police but also through citizens' arrest (Op. at 6), all of which comes with the possibility of armed confrontation, or worse,

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

[8] Here, this Court addressed, in a series of rulings, Defendants' motion to dismiss, followed by Plaintiffs' request for a Preliminary Injunction, and finally the parties' cross-motions for summary judgment. In other words – a completely ordinary pattern of litigation. To be sure, there were some logistical hurdles due to the nature of the statutory three-judge panel, but that hardly justifies a stay pending appeal.

merely for exercising an enumerated constitutional right. Not to mention, the loss of constitutional rights "for even minimal periods of time[] unquestionably constitutes irreparable injury[.]" *Elrod v. Burns*, 427 U.S. 347, 373 (1976). The equities clearly support Plaintiffs.

## CONCLUSION

For the foregoing reasons, this Court should deny Defendants' Motion for Stay of Judgment Pending Appeal.

Respectfully submitted:

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**Certificate of Service**

I hereby certify that a copy of the foregoing was served by mail to the Office of the Attorney General and chambers copies to the Panel on September 8, 2025 (and that copies were forwarded by email to the Court clerk, the Panel Coordinator and the Panel Paralegal):

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