IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
TWENTY-EIGHTH JUDICIAL DISTRICT, GIBSON COUNTY

STEPHEN L. HUGHES, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	**No. 24475**
	)	**Chancellor Michael Mansfield, Chief Judge**
BILL LEE, in his official capacity as Governor of the State of Tennessee, et al.,	)	**Judge M. Wyatt Burk**
	)	**Judge Lisa Nidiffer Rice**
	)	
Defendants.	)	

ORDER ON THE PARTIES' CROSS-MOTIONS FOR SUMMARY JUDGMENT

Before the Court[1] are the Cross-Motions for Summary Judgment of Plaintiffs Stephen L. Hughes; Duncan O'Mara; Elaine Kehel; Gun Owners of America, Inc.; and Gun Owners Foundation; and Defendants Bill Lee, in his official capacity as Governor of the State of Tennessee; Jonathan Skrmetti, in his official capacity as Attorney General for the State of Tennessee; Jeff Long, in his official capacity as the Commissioner of the Tennessee Department of Safety and Homeland Security; David Salyers, in his official capacity as the Commissioner of the Tennessee Department of Environment and Conservation; Frederick Agee, in his official capacity as the District Attorney General for Crockett, Gibson, and Haywood Counties; and Defendant Paul Thomas, in his official capacity as the Sheriff of Gibson County. Plaintiffs seek declaratory relief from Tenn. Code Ann. § 39-17-1307(a) (the "Going Armed Statute") and Tenn. Code Ann. § 39-17-1311(a) (the "Parks Statute"); these are both statutes that Plaintiffs argue make it a crime to carry a firearm in a public place in violation of Article I, Section 26 of the Tennessee Constitution. Defendants, however, challenge: whether this Court has the authority to grant such relief; whether Plaintiffs have standing to pursue their claims against Governor Lee and Attorney

[1] This Court sits as a Three-Judge Panel pursuant to Tenn. Code Ann. § 20-18-101 and Tenn. Sup. Ct. R. 54.

General Skrmetti; and, finally, whether Plaintiffs can establish their alleged facial constitutional violations in light of the existence of at least one constitutional application of those statutes. We held the hearing for these Cross-Motions at the Tennessee Supreme Court Building in Jackson, Tennessee, on April 30, 2025. Having considered the briefs and oral arguments of counsel and the applicable caselaw, the Court is now ready to issue its decision.

BACKGROUND

Plaintiffs instituted this action on February 16, 2023, with the filing of their Complaint for Declaratory and Injunctive Relief. On May 8 of the same year, Plaintiffs amended their Complaint to include additional Defendants. The Court considered and, on August 30, 2023, denied a Motion to Dismiss the First Amended Complaint filed Governor Lee and Attorney General Skrmetti. In the Memorandum and Order Denying the Motion to Dismiss, the Court rejected arguments of sovereign immunity, that Attorney General Skrmetti was an improper party under the Declaratory Judgments Act, and that Plaintiffs had no standing against either Governor Lee or Attorney General Skrmetti because neither has a duty or the authority to enforce the challenged statutes. On March 5, 2024, the Court denied Plaintiffs' Motion for Temporary Injunction on the basis that the Court lacked jurisdiction, sitting as the Chancery Court of Gibson County, to enjoin the enforcement of criminal statutes. The Court explained that the Three-Judge Panel Statute, Tenn. Code Ann. § 20-18-101, requires a duly appointed Three-Judge Panel to hear and determine qualifying causes of action, but the statute did not create a new court, meaning this Panel continued to sit as the Chancery Court of Gibson County. We also determined that the common law rule against courts of equity enjoining the enforcement criminal statutes could function alongside this statutory requirement because the Court could still hear and determine Plaintiffs' claims for

declaratory relief. Since that time, the parties have filed and litigated the instant Cross-Motions for Summary Judgment.

LEGAL STANDARDS

I. Tennessee Rule of Civil Procedure 56

In Tennessee, summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Tenn. R. Civ. P. 56.04; *Lemon v. Williamson Cnty. Schs.*, 618 S.W.3d 1, 12 (Tenn. 2021). "Whether the nonmoving party is a plaintiff or a defendant—and whether or not the nonmoving party bears the burden of proof at trial on the challenged claim or defense—at the summary judgment stage, '[t]he nonmoving party must demonstrate the existence of specific facts in the record which could lead a rational trier of fact to find in favor of the nonmoving party.'" *TWB Architects, Inc. v. Braxton, LLC*, 578 S.W.3d 879, 889 (Tenn. 2019) (quoting *Rye v. Women's Care Ctr. of Memphis, MPLLC*, 477 S.W.3d 235, 265 (Tenn. 2015)) (alteration in original). "In adjudicating motions for summary judgment, courts must view the evidence in the light most favorable to the nonmoving party and resolve doubts concerning the existence of genuine issues of material fact in favor of the nonmoving party." *Thompson v. Memphis City Sch. Bd. of Educ.*, 395 S.W.3d 616, 622 (Tenn. 2012) (citing *Martin v. Norfolk S. Ry.*, 271 S.W.3d 76, 83 (Tenn. 2008)).

II. Facial Challenges

Counsel for Plaintiffs explained at the hearing on this matter that Plaintiffs are only bringing a facial challenge to the statutes, not an as-applied challenge. "A facial challenge to a statute is 'the most difficult challenge to mount successfully since the challenger must establish

that no set of circumstances exist under which the Act would be valid.' Plaintiffs asserting a facial challenge, therefore, undertake an especially heavy legal burden." *Fisher v. Hargett*, 604. S.W.3d 381, 398 (Tenn. 2020) (quoting *Lynch v. City of Jellico*, 205 S.W.3d 384, 390 (Tenn. 2006)). This standard, Defendants explained at the hearing, arose in the United States Supreme Court's decision in *United States v. Salerno*, 481 U.S. 739, 745 (1987) ("A facial challenge to a legislative Act is, of course, the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the Act would be valid."). The Supreme Court has also articulated—citing to *Washington v. Glucksberg*, 521 U.S. 702, 740, n.7 (1997) (Stevens, J., concurring in judgments)—an alternative standard to the "typical facial attack," whereby the plaintiff must establish "that the statute lacks any 'plainly legitimate sweep.'" *United States v. Stevens*, 559 U.S. 460, 472 (2010) (quoting *Glucksberg*, 521 U.S. at 740 n.7); *see also Grater v. Damascus Twnshp. Trustees*, No. 22-3616, 2023 WL 3059080, at *3 (6th Cir. April 24, 2023) (quoting *Stevens*, 559 U.S. at 472) (stating the same); *Bianchi v. Brown*, 111 F.4th 438, 452 (4th Cir. 2024) (quoting *Stevens*, 559 U.S. at 472) (stating the same); *Animal Legal Defense Fund v. Reynolds*, 89 F.4th 1071, 1079 (8th Cir. 2024) (quoting *Phelps-Roper v. City of Manchester*, 697 F.3d 678, 685 (8th Cir. 2012) (en banc)) (stating the same). Therefore, in order to succeed in their facial challenges against these statutes, Plaintiffs[2] must establish either that the statute is either unconstitutional in every application or that the statute lacks a plainly legitimate sweep.

FINDINGS OF FACT

Many of the following facts are disputed, as acknowledged by footnote, on the basis that the purported fact is a legal assertion. When so noted, the Court makes no finding as that the statement is a fact rather than a legal assertion but that the relevant party has this impression. Many

[2] Under *Bruen*, this burden flips to Defendants, as we explain below.

other facts—typically the existence of a particular gun regulation at a certain time—are disputed on the basis of materiality.

Plaintiff Stephen L. Hughes is an adult United States citizen, a resident of Tennessee, and a resident of Gibson County. Hughes holds a Tennessee "enhanced" handgun carry permit. Hughes has no disqualification under state or federal law that would prohibit him from possessing a firearm. Plaintiff Duncan O'Mara is an adult United States citizen, a resident of Tennessee, and a resident of Crockett County. O'Mara holds a Tennessee "enhanced" handgun carry permit. O'Mara has no disqualification under state or federal law that would prohibit him from possessing a firearm. Plaintiff Elaine Kehel is an adult United States citizen, a resident of Tennessee, and a resident of Gibson County. Kehel does not have a Tennessee handgun permit. Kehel has no disqualification under state or federal law that would prohibit her from possessing a firearm.

At least one of the individual Plaintiffs desires to carry a firearm in Tennessee's public parks, greenways, public recreational areas, and other locations enumerated in Tenn. Code Ann. § 39-17-1311(a). At least one of the individual Plaintiffs in the past has carried a handgun in places covered by Tenn. Code Ann. § 39-17-1311(a). At least one of the individual Plaintiffs in the past has carried a handgun in places covered by Tenn. Code Ann. § 39-17-1307(a). In order to avoid risks of being stopped, detained, issued a citation, and/or arrested, the Individual Plaintiffs must either 1) not take any longarms to the areas enumerated in Tenn. Code Ann. § 39-17-1311(a); 2) not take a handgun to the areas enumerated in Tenn. Code Ann. § 39-17-1311(a); or 3) if he does take a handgun, to make sure he has his permit and that this handgun is generally not visible to third parties in order to minimize the risk of observation or detection by third parties.[3]

[3] The parties dispute whether individual Plaintiffs have made these choices or simply have them available to them.

But for the risk of being stopped, detained, or charged with a criminal offense under Tenn. Code Ann. § 39-17-1311(a), at least one of the individual Plaintiffs would carry a firearm including, in some instances, longarms, in areas enumerated in Tenn. Code Ann. § 39-17-1311(a) for personal protection and the protection of those he or she accompanies. At least one of the individual Plaintiffs desires to exercise to carry longarms in some areas that are covered by Tenn. Code Ann. § 39-17-1311(a), such as areas that may be inhabited by wild predators, asserting the right to do so.[4] Kehel understands that it is a crime under Tenn. Code Ann. § 39-17-1311(a) to carry a firearm in places enumerated in that statute, and that this is a chargeable Class A misdemeanor which could result in being jailed for up to 11 months and 29 days, fined, obligated to pay court costs, and other burdens associate with a criminal prosecution. However, under certain circumstances involving the use of the property by a school, the offense could be charged as a Class E felony.[5] Kehel understands that, if she is observed carrying a firearm in such places (like public parks, greenways), a law enforcement officer or even perhaps another citizen exercising citizen's arrest powers could stop, detain, issue a citation to, or even arrest by asserting that they have a reasonable basis to believe that she committed a criminal offense.[6] Kehel understands that Tenn. Code Ann. § 39-17-1311 provides no defense that would allow her, an individual who does not have a handgun permit, to carry handguns or any firearm generally for self-defense or defense of family or friends while she is in the places declared to be gun-free zones by Tenn. Code Ann. § 39-17-1311(a).[7] Kehel understands that, in order to avoid the risks of being stopped, detained,

[4] Defendants dispute the legal assertion that there is a right to carry longarms in some areas that are covered by Tenn. Code Ann. § 39-17-1311(a).

[5] Defendants dispute the materiality of Kehel's understanding of the statute and whether this a fact at all rather than a legal assertion.

[6] *See supra* note 5.

[7] *See supra* note 5.

issued a citation, and/or arrested, she is banned under threat of criminal prosecution from taking any firearms into areas enumerated in Tenn. Code Ann. § 39-17-1311(a).[8]

Eric Pratt is the Senior Vice President of Plaintiff Gun Owners of America, Inc. ("GOA") and also the Senior Vice President of Plaintiff Gun Owners Foundation ("GOF"). Pratt, in his official capacity, has frequent contact with members and supporters of GOA and GOF. Pratt, in his official capacity, also oversees the staff of GOA and GOF that have daily contact with the members and supporters of those organizations. Both Pratt and GOA staff have contact with GOA and GOF members regarding their concerns, questions, requests, and suggestions on how the organizations can best represent the members' and supporters' interests. GOA is a nonprofit corporation that is recognized as a Section 501(c)(4) entity. GOA was formed to preserve and defend the rights of gun owners to keep and bear arms under the Second Amendment and state constitutional provisions. GOA has more than 2 million members and supporters across the country, including residents of the State of Tennessee. Many of GOA's members have been, are being, and will be irreparably harmed by Tennessee's restrictions as to where its citizens and visitors to the state can possess or carry firearms.[9]

GOF is a non-stock corporation that is organized and operated as a nonprofit legal defense and educational foundation that is recognized as a Section 501(c)(3) entity. GOF is supported by gun owners, including residents of Tennessee, many of whom have been, are being, and will be irreparably harmed by Tennessee's restrictions as to where its citizens and visitors can possess or carry a firearm.[10] GOA and GOF's members and supporters are harmed by Tennessee's statutory

[8] *See supra* note 5.

[9] Defendants dispute that the challenged statutes irreparably harm Tennesseans but note this is a legal assertion at the heart of the lawsuit.

[10] *See supra* note 9.

prohibitions on possessing firearms in a host of public places, including public parks.[11] GOA and GOF have heard from their members and supporters, including at least one of the individual Plaintiffs, who have been directly impacted by Tennessee's infringements with respect to their constitutionally protected right to keep and bear arms.[12]

For example, one GOA member, who currently has a Tennessee enhanced carry permit, carries his firearms everywhere that it is legal to carry. Due to Tennessee's laws, this GOA member is unable to lawfully carry a firearm to defend himself and his family, including his children, while visiting Tennessee parks, which he and his family do on a regular basis.[13] Another GOA member, who does not have a carry permit, wishes to carry a firearm in parks. If she were allowed to carry in the park and in other places identified in Tenn. Code Ann. § 39-17-1311(a), such as a "playground, civic center or other building, facility, area or property owned, used or operated by any municipal, county or state government, or instrumentality thereof," she would do so, but she does not as she fears arrest and prosecution. Since Tenn. Code Ann. § 39-17-1307(a) provides that carrying any firearm "with the intent to go armed" is a criminal offense, GOA and GOF members and supporters in Tennessee can be stopped, charged, detained, and/or arrested for carrying with intent to go armed anywhere in the state.[14] This statute makes the entire state a "gun-free" zone for GOA and GOF members and supporters who are, as a result of this statute, at risk

[11] *See supra* note 9.

[12] *See supra* note 9.

[13] Defendants dispute that this GOA member is unable to lawfully carry a firearm in Tennessee parks because Tennessee law permits those with permits to carry a handgun in Tennessee parks. Defendants also note this portion of the statement is a legal assertion rather than a fact.

[14] Defendants dispute the accuracy this statement but also note that it is a legal assertion rather than a fact.

of being stopped, detained, charged, or arrested by law enforcement, and for which they are provided merely a statutory defense under Tenn. Code Ann. § 39-17-1308.[15]

Protection of these rights and interests as advanced in this litigation is germane to GOA and GOF's respective missions, which includes the effort the preserve and protect the Second Amendment right of Americans to keep and bear arms, including similar constitutional protections enshrined in various states' constitutions. GOA and GOF routinely litigate cases throughout the country on behalf of their members and supporters, and GOA and GOF are capable of fully and faithfully representing the interests of their members and supporters without participation by each of the individuals and entities. GOA and GOF, on behalf of their members and supporters, have challenged similar laws, particularly since the United States Supreme Court decision in *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022).

In 1869, Tennessee "enacted a law restricting the carrying of dangerous weapons into 'any election . . . fair, race course, or other public assembly of the people.'"[16] From the Founding through the nineteenth century, many jurisdictions adopted licensing requirements for carrying, discharging, and selling firearms, including: Pennsylvania (1713, 1750, 1760); New Jersey (1771); New Orleans, Louisiana (1870); Bloomington, Illinois (1876); Lake, Illinois (1882); Berlin, Wisconsin (1890); Alameda, California (1894); Lincoln, Nebraska (1895); Memphis,

[15] *See supra* note 14.

[16] Plaintiffs dispute the materiality of this fact because a Reconstruction-era (or later) law is immaterial to the original meaning of Article I, Section 26 of the Tennessee Constitution, whose protections cannot be lesser than those in the Second Amendment. *See Bruen*, 597 U.S. at 37 ("generally assum[ing] that the scope of the protection . . . is pegged to the public understanding of the right when the Bill of Rights was adopted in 1791"); *id.* ("19th-century evidence [i]s 'treated as mere confirmation of what the Court though had already been established.'"); *id.* at 36 ("[B]ecause post-Civil War discussions of the right to keep and bear arms 'took place 75 years after the ratification of the Second Amendment, they do not provide as much insight into its original meaning as earlier sources.'"); *Andrews v. State*, 50 Tenn. 165, 183 (1871) ("[I]t is evident the State Constitution was intended to guard the same right, and with the same ends in view. So that, the meaning of one, will give us an understanding of the purpose of the other."). Plaintiffs additionally dispute the materiality of the law's substance, arguing it is not "relevantly similar" to the challenged statutes under *Bruen*.

Tennessee (1867); Tennessee (1879); St. Paul, Minnesota (1882); Chicago, Illinois (1880); St. Louis, Missouri (1868); Ritzville, Washington (1899); Sacramento, California (1876), Oakland, California (1890); Eureka, California (1905); San Francisco, California (1884); Santa Barbara, California (1888); Hood River Glacier, Oregon (1895); Osceola, Missouri (1887); Astoria, Oregon (1879); Scandia, Kansas (1894); New York (1880); Montclair, New Jersey (1897).[17] In 1867, Memphis specifically required "a permit from the Mayor" to discharge a firearm "in the streets, alleys or public grounds of the city."[18] In 1879, Tennessee required a license to sell, give away, or dispose of firearms.[19]

Several additional statements concerning locations identified by the Parks Statute are vigorously contested and, as such, not included in our findings. At the local level, city parks emerged as "places for 'passive recreation,' which meant sitting, strolling, slow horse riding, and other quiet activities." State and national parks emerged shortly after local urban parks, and for the same reasons—"the improvement of American society."[20] Parks functioned both as places of contemplation, quiet, and rest, and, by the late 1880s, as places for active recreation, particularly by children at play.[21] Recreation was seen as vital for healthy child development, and parks allowed safe and accessible recreation. National parks banned firearms contemporaneous with their creation, including Yellowstone (1894); Yosemite (1897); Sequoia (1890); and Mackinac

[17] Plaintiffs dispute the materiality of this fact because the 1713 and 1750 Pennsylvania laws regulated only discharge. The 1760 Pennsylvania law was an anti-poaching measure requiring permission "from the owner of such lands" to hunt. The 1771 New Jersey law was a similar anti-poaching measure. Thus, these laws are not "relevantly similar" under *Bruen*. Additionally, the remaining Reconstruction-era laws are immaterial because they do not shed light on the original meaning of the Second Amendment. *See supra* note 16.

[18] *See supra* note 16.

[19] *See supra* note 16.

[20] Plaintiffs dispute the relevance of this statement.

[21] *See supra* note 20.

(1882).[22] When the National Park Service was created, it banned firearms in national parks nationwide.[23] Memphis barred carrying firearms in parks without special permission, and Chattanooga went a step further by banning firearms in parks entirely.[24] In 1935, the Tennessee State Planning Commission adopted a plan to allocate land for forestry and recreational purposes with the same goal as the creation of parks around the nation: to "promote the health, safety, morals, order, convenience[,] and welfare of the people."[25] By the 1950s there were seventeen state parks in Tennessee.[26] In the modern era, that number has exploded to 59 state parks that see approximately 38.5 million visitors per year.[27]

American firearms restrictions in sensitive places, such as legislative assemblies and polling places, began as early as the mid-1600s.[28] Many Tennessee parks, as well as community, recreational, and civic centers serve as polling places.[29] Tens of thousands of children participate in programs and camps hosted in Tennessee state parks throughout the year (list not recreated).[30]

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[22] *See supra* note 20.

[23] *See supra* note 16.

[24] *See supra* note 16.

[25] *See supra* note 16.

[26] *See supra* note 16.

[27] *See supra* note 16.

[28] Plaintiffs challenge the materiality of this statement because whether legislative assemblies and polling places are sensitive places is a legal conclusion, and in any event legislative assemblies and polling places are not "relevantly similar" to recreational areas.

[29] Plaintiffs argue this statement is irrelevant because there is no statewide law that addresses the possession of firearms in polling places.

[30] Plaintiffs assert this fact is irrelevant under *Bruen*.

Tennessee governmental recreational areas and community centers offer many athletic and educational activities for children.[31]

CONCLUSIONS OF LAW

I. Subject Matter Jurisdiction

"Subject matter jurisdiction involves a court's power to adjudicate a matter before it." *Born Again Church & Christian Outreach Ministries, Inc. v. Myler Church Bldg. Sys. of the Midsouth, Inc.*, 266 S.W.3d 421 (Tenn. Ct. App. 2007) (citing *First Am. Trust Co. v. Franklin-Murray Development Co., L.P.*, 59 S.W.3d 135, 140 (Tenn. Ct. App. 2001)). It "is conferred on a court by statute or the constitution." *Griffin v. Campbell Clinic, P.A.*, 439 S.W.3d 899, 902 (Tenn. 2014) (quoting *Johnson v. Hopkins*, 432 S.W.3d 840, 843 (Tenn. 2013)). Here, Defendants challenge this Court's subject matter jurisdiction to issue declaratory relief from a criminal statute because, while we sit as a Three-Judge Panel, this Court remains the Chancery Court for the State of Tennessee, the Twenty-Eighth Judicial District at Gibson County—a court of equity. Previously, during the pendency of Plaintiffs' Motion for Preliminary Injunction, Defendants challenged this Court's authority to issue injunctive relief from a criminal statute. We denied Plaintiffs' motion on that basis. In that ruling, we explained that

> "[t]he chancery court has all the powers, privileges and jurisdiction properly and rightfully incident to a court of equity." Tenn. Code Ann. § 16-11-101. One such longstanding power of a court of equity is to issue an injunction to protect individuals from irreparable harm. *See, e.g.*, *Muehlman v. Keilman*, 272 N.E.2d 591, 595 (Ind. 1971) (quoting William L. Prosser, Law of Torts 624 (3d ed. 1964)) ("The power of a court of equity, in a proper case, to enjoin a nuisance is of long standing, and apparently has never been questioned since the earlier part of the eighteenth century. As in other cases of equity jurisdiction, it must appear that recovery of damages at law will not be an adequate remedy; but since equity regards every tract of land as unique, it considers that damages are not adequate where its usefulness is seriously impaired."). A Tennessee chancery court, however, has no power to enjoin the enforcement of criminal statutes. *See Clinton Books, Inc. v. City of Memphis*, 197 S.W.3d 749, 752 (Tenn. 2006) (citing *Alexander v. Elkins*,

[31] *See supra* note 30.

> 132 Tenn. 663, 179 S.W. 310, 311 (1915); *J.W. Kelly & Co. v. Conner*, 122 Tenn. 339, 123 S.W. 622, 637 (1909)) ("The long-standing rule in Tennessee is that state courts of equity lack jurisdiction to enjoin the enforcement of a criminal statute that is alleged to be unconstitutional."); *Storey v. Nichols*, 49 S.W.3d 288, 289 (Tenn. Ct. App. 2000) (citing *Earhart v. Young*, 174 Tenn. 198, 124 S.W.2d 693 (1939); *Campbell v. Sundquist*, 926 S.W.2d 250 (Tenn. Ct. App.1996); *State v. Osborne*, 712 S.W.2d 488 (Tenn. Crim. App. 1986)) ("[A]s a rule with very few exceptions, an equity court has no jurisdiction to enjoin a pending or threatened criminal prosecution."); *Tennessee Downs, Inc. v. Gibbons*, 15 S.W.3d 843, 847 (Tenn. Ct. App. 1999) ("[T]he Tennessee Supreme Court has consistently held that the chancery courts of this state have no jurisdiction, inherent or statutory, to enjoin threatened criminal prosecutions, particularly as the defense of such prosecution provides an adequate remedy."). As the Supreme Court explained:
>
> > Permitting a court of equity to interfere with the administration of this state's criminal laws, which that court is without jurisdiction to enforce, would cause confusion in the preservation of peace and order and the enforcement of the State's general police power.
>
> *Clinton Books, Inc.*, 197 S.W.3d at 752 (citing *J.W. Kelly & Co.*, 123 S.W. at 637). While this rule is not without exception, none are in play here. *See id.* at 753–54.

Order Deny'g Mot. for Prelim. Inj., at *2–4, Mar. 5, 2024. But the Three-Judge Panel Statute, Tenn. Code Ann. § 20-18-101, requires a duly appointed three-judge panel to "hear[] and determine[]" certain constitutional challenges to state law. So this Court followed the careful balance set out by the Tennessee Supreme Court for when an applicable statute and the applicable common law appear to conflict:

> In light of the language of Tenn. Code Ann. § 20-18-101, we agree that the instant case "must be heard and determined" by this Court regardless of the previous common law rule. *Ultsch v. HTI Memorial Hospital Corp.*, 674 S.W.3d 851, 854 (Tenn. 2023) (quoting *Graves v. Ill. Cent. R.R. Co.*, 148 S.W. 239, 242 (1912)) ("When there is a conflict between the common law and a statute, the provision of the statute must prevail."). But "statutes in derogation of the common law are to be strictly construed and confined to their express terms." *Ultsch*, 674 S.W.3d at 868 (quoting *Houghton v. Aramark Educ. Res., Inc.*, 90 S.W.3d 676, 679 (Tenn. 2002)). Thus, we are not permitted to conclude that the General Assembly abolished by implication the general common law rule against courts of equity enjoining criminal statutes. In other words, if a court is able to effect the language of Tenn. Code Ann. § 20-18-101 without infringing upon that rule, it must do so. Here, Plaintiffs seek injunctive *and* declaratory relief. The Court is therefore still able to "hear[] and determine[]" Plaintiffs' case despite our inability to issue a preliminary injunction because we are able to enter a final ruling on their claim for declaratory relief. *See Zirkle v. City of Kingston*, 396 S.W.2d 356, 363 (Tenn. 1965)

> ("A declaratory judgment is proper in chancery, but only if chancery originally could have entertained a suit of the same subject matter."); *Blackwell v. Haslam*, No. M2011-00588-COA-R3-CV, 2012 WL 113655, at *5–6 (Tenn. Ct. App. Jan. 11, 2012) (holding that chancery courts have subject matter jurisdiction over a claim for declaratory relief regarding the constitutionality of a criminal statute).[32] This approach is consistent with not only the canons of statutory construction but also with Tennessee common law existing prior to the enactment of the Three-Judge Panel Statute.

Order Deny'g Mot. for Prelim. Inj., at *6–7.

Defendants now argue this Court likewise lacks jurisdiction to issue declaratory relief with regard to criminal statutes. They assert that we erred in distinguishing declaratory relief from injunctive relief because Tennessee jurisprudence allows a court of equity to issue neither form of relief in the sphere of criminal law. We are not persuaded. The 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. *See Zirkle v. City of Kingston*, 396 S.W.2d 356, 363 (Tenn. 1965); *Hill v. Beeler*, 286 S.W.2d 868, 871 (Tenn. 1956); *Memphis Bonding Co., Inc. v. Crim. Ct. of Tenn., 30th Dist.*, 490 S.W.3d 458, 465–66 (Tenn. Ct. App. 2015); *Carter v. Slatery*, No. M2015-00554-COA-R3-CV, 2016 WL 1268110, at *5–7 (Tenn. Ct. App. Oct. 25, 2021). Discussing these same cases, one of our sister three-judge panels explained that these cases:

> are distinguishable on their facts. In *Zirkle*, the plaintiffs brought a claim for "unliquidated damages for injuries to property not resulting from a breach of oral or written contract," which was explicitly excluded from chancery court jurisdiction under existing law. 396 S.W.2d at 362. Likewise, in *Beeler*, the Court held that the chancery court could not maintain jurisdiction over a case seeking to declare the jurisdiction of the Board of Claims because the underlying case was barred by sovereign immunity, and "[g]enerally, declaratory judgments will not be

[32] As we explained in the footnote here:

> The Court of Appeals subsequently questioned the reasoning of *Blackwell* in *Carter v. Slatery*, No. M2015-00554-COA-R3-CV, 2016 WL 1268110, at *6–7 (Tenn. Ct. App. Feb. 19, 2016). We distinguish that case, however, on the basis that it dealt with a declaratory judgment action being effectively used as a postconviction proceeding—and thus a direct intrusion into the jurisdiction of the criminal courts—rather than a civil challenge to an allegedly unconstitutional criminal statute. *Cf. Frazier v. Slatery*, No. E2020-01216-COA-R3-CV, 2021 WL 4945235, at *5 (Tenn. Ct. App. 2021) (discussing *Carter*).

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> granted to determine the power or jurisdiction of Boards, Commissions, or inferior courts." 268 S.W.2d at 871. Finally, the court in *Memphis Bonding Co.* held that the chancery court could not declare a local criminal court rule unconstitutional because, just like enjoining a criminal statute, such a declaration would "be invading the jurisdiction of the criminal court," and the court otherwise had no basis for jurisdiction. 490 S.W.3d at 465.

Torch Electronics, LLC v. Mulroy, No. CH-24-0985, at *7 (Tenn. Ch. Ct., Shelby Cnty. Nov. 19, 2024); *see also id.* at *7 n.2 (citing *Carter*, 2016 WL 1268110, at *2, *7 (noting that the court in *Carter* held a chancery court could not hear a request for postconviction relief styled as a declaratory judgment action because chancery courts do not have jurisdiction over "criminal cases"). The sole exception is *Spoone v. Mayor & Aldermen of Town of Morristown*, 206 S.W.2d 422, 423–24 (Tenn. 1947), which dealt with a criminal ordinance. There, in holding that the chancery court lacked jurisdiction, the Court reiterated its prior holding that "courts of equity have no jurisdiction to *enjoin threatened criminal proceedings* under a statute enacted by a state in the exercise of the police power." *Id.* at 424 (quoting *J.W. Kelly & Co. v. Conner*, 123 S.W. 622, 636 (Tenn. 1909)) (emphasis added). We have already agreed that a chancery court lacks authority to enjoin criminal statutes or to interfere in criminal proceedings, and so the immediate relevance of this holding to declaratory relief from a criminal statute is unclear. The *Spoone* Court does, however, note at the outset of its opinion that the plaintiffs, in addition to seeking an injunction, sought "to have the ordinance declared void." *Id.* at 423. No mention is made again of declaratory relief. This alone is not persuasive.

Assuming *arguendo*, however, that Defendants are correct that a chancery court, as a general rule, has no jurisdiction to issue declaratory relief from a criminal statute, this Court is forced to return to the Three-Judge Panel Statute. The careful balance struck before would now no longer be possible, and we are required to hear and determine Plaintiffs' claims. Tenn. Code Ann. § 20-18-101; *see also Torch Electronics, LLC*, No. CH-24-0985, at *8 ("If this argument

were to be accepted, Defendant would have the Court in effect read Tennessee Code Annotated § 20-18-101 to say that Three-Judge Panels 'must . . . hear[] and determine[]' cases that challenge the constitutionality of a state statute, 'except for criminal statutes.' It is axiomatic that 'courts "must be circumspect about adding words to a statute that the General Assembly did not place there,"' . . . , and the language of the Three-Judge Panel statute cannot be squared with Defendant's arguments to the contrary.").

Accordingly, this Court holds it has jurisdiction to issue the declaratory relief sought by Plaintiffs.

II. Standing

Defendants also revisit standing. These arguments, for the most part previously made in their Motion to Dismiss Governor Lee and Attorney General Skrmetti, assert that Plaintiffs cannot establish the third prong of constitutional standing—traceability—because neither of those Defendants is responsible for enforcing the challenged statutes. While we acknowledge Defendants are correct that there is a heightened burden of proof imposed upon Plaintiffs at the summary judgment stage when compared to the motion to dismiss stage, that difference is inconsequential here because our analysis was based upon legal conclusions rather than upon any allegations made by Plaintiffs that were taken as true and must now be supported by evidence. Defendants seek to reargue these issues, which they state is to preserve them for appeal. As such, we incorporate our previous reasoning into this ruling and again hold that Plaintiffs have standing to bring their claims against Governor Lee and Attorney General Skrmetti.[33] *See generally* Mem. & Order, at *8–20, Aug. 30, 2023.

[33] To the extent that Defendants argue, as they did at the hearing on these Cross-motions, that the Court has complied with existing precedent by allowing Attorney General Skrmetti to be added as a party but can now enter summary judgment in his favor under the same reasoning because we are not required by that precedent to allow judgment to enter against him is to further contort this issue. As the Court conceded in its prior decision, we do

The Court does wish to address, however, a new argument made by Defendants with respect to Attorney General Skrmetti. They argue that this Court ought to apply the Tennessee Supreme Court's decision in *Cummings v. Shipp*, 3 S.W.2d 1062 (Tenn. 1928), rather than the decisions we applied in our prior ruling, *Cummings v. Beeler*, 223 S.W.2d 913 (Tenn. 1949), and *Buena Vista Special School District v. Board of Election Commissioners*, 116 S.W.2d 1008 (Tenn. 1938). Defendants assert that, when lines of precedent conflict, the more recent decision is usually narrowed or distinguished from the earlier precedent. *See Giles v. Geico Gen. Ins. Co.*, 643 S.W.3d 171, 183–85 & n.8 (Tenn. Ct. App. 2021). This is assertion is correct, but ultimately, as the *Giles* court explained, the courts are bound to apply the decision "on point." *Id.* And in *Shipp*, the Supreme Court simply states from the statutory language that the Attorney General was required to be given notice of the proceeding and then dismissed the action because "[t]he Attorney General of the state was not made a party to the proceeding, and no notice was served upon him." *Shipp*, 3 S.W.2d at 1063. This is not contrary precedent; the *Shipp* Court does not address the precise issue. As such, Defendants' argument is unpersuasive.

III. Constitutionality of the Going Armed and Parks Statutes

A. *Article One, Section 26 of the Tennessee Constitution*

Our state Constitution has protected the right to keep and bear arms since it first went into effect in 1796 has continued to do so since the present form of the constitutional provision was adopted in 1870. Tenn. Const., art. XI, § 26 (1796) ("That the freemen of this State have a right to keep and to bear Arms for their common defence."); Tenn. Const., art. I, § 26 (1834) ("That the free white men of this State have a right to Keep and to bear arms for their common defence.");

believe that Defendants have the better reading of the plain language of Tenn. Code Ann. § 29-14-107(b), but that belief by a trial court is inconsequential under contrary Supreme Court precedent. This Court sees no interest being served by requiring the Attorney General to be subject to an involvement in these cases that is ultimately without any purpose.

Tenn. Const., art. I, § 26 (1870) ("That the citizens of this State have a right to keep and to bear arms for their common defense; but the Legislature shall have power, by law, to regulate the wearing of arms with a view to prevent crime."). In examining one of the earlier iterations of this provision, the Tennessee Supreme Court explained that Tennesseans insisted upon the right to keep and bear arms with a view towards prevention of the sorts of abuses that had occurred in England—whereby those who had not achieved a certain level of wealth could not own firearms, and later the Crown disarmed religious opponents. *Aymette v. State*, 21 Tenn. (2 Hum.) 154, 156–57 (1840) ("By the act of 22 & 23 Car. II., ch. 25, sec. 3, it is provided that no person who has not lands of the yearly value of £100, other than the son and heir apparent of an esquire, or other person of higher degree, etc., shall be allowed to keep a gun, etc. By this act, persons of a certain condition in life were allowed to keep arms, while a large proportion of the people were entirely disarmed. . . . It was in reference to these facts, and to this state of the English law, that the 2d section of the amendments to the constitution of the United States was incorporated into that instrument. . . . In the same view the section under consideration of our own bill of rights was adopted."). The Court continued:

> The evil that was produced by disarming the people in the time of James II. was that the king, by means of a standing army quartered among the people, was able to overawe them, and compel them to submit to the most arbitrary, cruel, and illegal measures. Whereas, if the people had retained their arms, they would have been able, by a just and proper resistance to those oppressive measures, either to have caused the king to respect their rights, or surrender (as he was eventually compelled to do) the government into other hands. No private defence was contemplated, or would have availed anything. If the subjects had been armed, they could have resisted the payment of excessive fines, or the infliction of illegal and cruel punishments. When, therefore, Parliament says that "subjects which are Protestants may have arms for their defence, suitable to their condition, as allowed by law," it does not mean for private defence, but, being armed, they may as a body rise up to defend their just rights, and compel their rulers to respect the laws. This declaration of right is made in reference to the fact before complained of, that the people had been disarmed, and soldiers had been quartered among them contrary to law. The complaint was against the government. The grievances to which they

> were thus forced to submit were for the most part of a public character, and could have been redressed only by the people rising up for their common defence, to vindicate their rights.
>
> The section under consideration, in our bill of rights, was adopted in reference to these historical facts, and in this point of view its language is most appropriate and expressive. Its words are, "the free white men of this state have a right to keep and bear arms for their common defence." It, to be sure, asserts the right much more broadly than the statute of 1 William & Mary. For the right there asserted is subject to the disabilities contained in the act of Charles II. There, lords and esquires, and their sons, and persons whose yearly income from land amount to £100, were of suitable condition to keep arms. But, with us, every free white man is of suitable condition, and, therefore, every free white man may keep and bear arms. But to keep and bear arms for what? If the history of the subject had left in doubt the object for which the rights is secured, the words that are employed must completely remove that doubt. It is declared that they may keep and bear arms for their common defence. The word "common," here used, means, according to Webster: 1. Belonging equally to more than one, or to many indefinitely. 2 Belonging to the public. 3. General. 4. Universal. 5. Public. The object, then, for which the right of keeping and bearing arms is secured is the defence of the public. The free white men may keep arms to protect the public liberty, to keep in awe those who are in power, and to maintain the supremacy of the laws and the constitution. The words "bear arms," too, have reference to their military use, and were not employed to mean wearing them about the person as part of the dress. As the object for which the right to keep and bear arms is secured is of general and public nature, to be exercised by the people in a body, for their common defence, so the arms the right to keep which is secured are such as are usually employed in civilized warfare, and that constitute the ordinary military equipment. If the citizens have these arms in their hands, they are prepared in the best possible manner to repel any encroachments upon their rights by those in authority. They need not, for such a purpose, the use of those weapons which are usually employed in private broils, and which are efficient only in the hands of the robber and the assassin. These weapons would be useless in war. They could not be employed advantageously in the common defence of the citizens. The right to keep and bear them is not, therefore, secured by the constitution.

Id. at 157–58.

In *Andrews v. State*, 50 Tenn. (3 Heisk.) 165, 170–71 (1871), the Tennessee Supreme Court considered the constitutionality of "[a]n act to preserve the peace and prevent homicide" under Article I, Section 26 in its current form, and, in doing so, had occasion to thoroughly describe the contours and limits of the provision. The relevant portion of the challenged statute in that case stated

> that it shall not be lawful for any person to publicly or privately carry a dirk, swordcane, Spanish stiletto, belt or pocket pistol or revolver. Any person guilty of a violation of this section shall be subject to presentment or indictment, and on conviction, shall pay a fine of not less than ten, nor more than fifty dollars, and be imprisoned at the discretion of the court, for a period of not less than thirty days, nor more than six months; and shall give bond in a sum not exceeding one thousand dollars, to keep the peace for the next six months after such conviction.

Id. at 171. The Court first examined what rights are protected by Article I, Section 26. The object of the provision, the Court explained, "was the efficiency of the people as soldiers, when called into actual service for the security of the State, as one end; and in order to this, they were to be allowed to keep arms." *Id.* at 177–78. "What, then, is involved in this right of keeping arms?" the Court continued. *Id.* at 178.

> It necessarily involves the right to purchase and use them in such a way as is usual, or to keep them for the ordinary purposes to which they are adapted; and as they are to be kept, evidently with a view that the citizens making up the yeomanry of the land, the body of the militia, shall become familiar with their use in times of peace, that they may the more efficiently use them in times of war; then the right to keep arms for this purpose involves the right to practice their use, in order to attain to this efficiency. The right and use are guaranteed to the citizen, to be exercised and enjoyed in time of peace, in subordination to the general ends of civil society; but, as a right, to be maintained in all its fulness.

Id. The Court elaborated further:

> The right to keep arms, necessarily involves the right to purchase them, to keep them in a state of efficiency for use, and to purchase and provide ammunition suitable for such arms, and to keep them in repair. And clearly for this purpose, a man would have the right to carry them to and from his home, and no one could claim that the Legislature had the right to punish him for it, without violating this clause of the Constitution.
>
> But farther than this, it must be held, that the right to keep arms involves, necessarily, the right to use such arms for all the ordinary purposes, and in all the ordinary modes usual in the country, and to which arms are adapted, limited by the duties of a good citizen in times of peace; that in such use, he shall not use them for violation of the rights of others, or the paramount rights of the community of which he makes a part.

Id. at 178–79. Then the Court delved into the specifics. What is meant by "arms"? Arms are "such weapons . . . as the term is understood in the popular language of the country[] and such as

are adapted to . . . the efficiency of the citizen as a soldier, when called on to make good 'the defence of a free people.'" *Id.* at 179. What is meant by the right to "keep" and thus "use"?

> Not every thing that may be useful for offense or defense; but what may properly be included or understood under the title of arms, taken in connection with the fact that the citizen is to keep them, as a citizen. Such, then, as are found to make up the usual arms of the citizen of the country, and the use of which will properly train and render him efficient in defense of his own liberties, as well as of the State. Under this head, with a knowledge of the habits of our people, and of the arms in the use of which a soldier should be trained, we would hold, that the rifle of all descriptions, the shot gun, the musket, and repeater, are such arms; and that under the Constitution the right to keep such arms, can not be infringed or forbidden by the Legislature. Their use, however, to be subordinated to such regulations and limitations as are or may be authorized by the law of the land, passed to subserve the general good, so as not to infringe the right secured and the necessary incidents to the exercise of such right.

Id. at 179–80. Thus, the Court concluded that Article I, Section 26 protects the citizen's rights to (1) possess at home and (2) travel with for purchase, maintenance, or training (3) such weapons "as are found to make up the usual arms of the citizen of the country, and the use of which will properly train and render him efficient in defense of his own liberties, as well as of the State."

The Court next examined what limitations the General Assembly could impose upon the use of such arms. It flatly rejected the then-Attorney General's view that the Legislature was empowered by the second clause of Article I, Section 26 "to prohibit absolutely the wearing of all and every kind of arms, under all circumstances." *Id.* at 180–81. "To this we can not give our assent. The power to regulate, does not fairly mean the power to prohibit; on the contrary, to regulate, necessarily involves the existence of the thing or act to be regulated." *Id.* "But the power is given to regulate, with a view to prevent crime. The enactment of the Legislature on this subject, must be guided by, and restrained to this end, and bear some well defined relation to the prevention of crime, or else it is unauthorized by this clause of the Constitution." *Id.* at 181.

> Therefore, a man may well be prohibited from carrying his arms to church, or other public assemblage, as the carrying them to such places is not an appropriate

> use of them, nor necessary in order to his familiarity with them, and his training and efficiency in their use. As to arms worn, or which are carried about the person, not being such arms as we have indicated as arms that may be kept and used, the wearing of such arms may be prohibited if the Legislature deems proper, absolutely, at all times, and under all circumstances.

Id. at 182. The Court thereafter determined the challenged statute was constitutional with respect to those enumerated weapons with the exception of the revolver. The revolver, it determined, may or may not be of such a character "as is adapted to the usual equipment of the soldier, or the use of which may render him more efficient as such," and therefore was "a matter to be settled by evidence as to what character of weapon" it was. *Id.* at 187. If the revolver was found to be such a weapon, then the statute's prohibition was unconstitutional because it forbid the carrying of the weapon privately or publicly without regard to time, place, or circumstances and thus amounted to an absolute prohibition rather than the regulation of use. *Id.*

Notably, the Court elaborated still further on the interplay of Article I, Section 26 and the right to self-defense. The existence of such a right was unquestioned by the law. *Id.* at 188. "[B]ut the right to use weapons, or select weapons for such defense, which the law forbids him to keep or carry about his person. . . . would amount to a denial of the right of the Legislature to prohibit the keeping of such weapons." *Id.* Thus, "[t]he law allows ample means of self-defense, without the use of the weapons which we have held may be rightfully prescribed by this statute." *Id.* at 189.

The applicability of *Andrews* and other Tennessee cases, however, is limited. At the outset of *Andrews*, the Tennessee Supreme Court examined whether the Second Amendment to the United States Constitution applied to the State of the Tennessee. *Id.* at 171–75. The Court determined the Second Amendment did not:

> "Had the framers of these amendments intended them to be limitations on the powers of the State governments, they would have imitated the framers of the original Constitution, and have expressed that intention."
>
> The State Legislature is not, then, limited in its powers on this subject by this article of the Constitution of the United States; it is a limitation, whatever be its construction and meaning, upon the powers of the other government, ordained and established by the people of the States themselves, or their Conventions or Legislatures.

Id. at 175 (quoting *Barron v. City of Baltimore*, 32 U.S. 243, 250 (1833), *superseded by constitutional amendment* as stated in *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 237 (2022)). As discussed below, this changed when the Supreme Court of the United States held that the Fourteenth Amendment incorporated the Second Amendment against the several States in *McDonald v. City of Chicago*, 561 U.S. 742, 791 (2010). And, as is also discussed below, it is a Second Amendment analysis that this Court must perform in considering Plaintiffs' challenges under Article I, Section 26. For these reasons, our focus turns to federal jurisprudence.

B. *Second Amendment to the Federal Constitution*

"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." U.S. Const., amend. II. The United States Supreme Court has explained that "the right of the people" here means the "right is exercised individually and belongs to all Americans." *District of Columbia v. Heller*, 554 U.S. 570, 581 (2008). Thus, the Court concluded "the Second Amendment conferred an individual right to keep and bear arms." *Id.* at 596. "[T]he most natural reading of "keep Arms" in the Second Amendment is to 'have weapons.'" *Id.* at 582. And "[a]t the time of the founding, as now, to 'bear' meant to 'carry.' When used with 'arms,' however, the term has a meaning that refers to carrying for a particular purpose—confrontation." *Id.* at 584 (citations omitted). And so the Court concluded that to "bear Arms" is to carry 'for the purpose . . . of being armed and ready for offensive or defensive action in a case of conflict with another person.'" *Id.* (quoting *Muscarello v. United*

States, 524 U.S. 125 (1998)); *see also New York State & Rifle Ass'n, Inc. v. Bruen*, 597 U.S. 1, 32 (2022) ("As we explained in *Heller*, the 'textual elements' of the Second Amendment's operative clause— 'the right of the people to keep and bear Arms, shall not be infringed'—'guarantee the individual right to possess and carry weapons in case of confrontation.' *Heller* further confirmed that the right to 'bear arms' refers to the right to 'wear, bear, or carry . . . upon the person or in the clothing or in a pocket, for the purpose . . . of being armed and ready for offensive or defensive action in a case of conflict with another person.'").

The Supreme Court also noted, however, that "[o]f course the right [to keep and bear arms] was not unlimited, just as the First Amendment's right of free speech was not. Thus, we do not read the Second Amendment to protect the right of citizens to carry arms for *any sort* of confrontation, just as we do not read the First Amendment to protect the right of citizens to speak for *any purpose*." *Heller*, 554 U.S. at 595 (citing *United States v. Williams*, 553 U.S. 285 (2008)) (emphasis in original). Nevertheless, "[t]he very enumeration of the right takes out of the hands of government—even the Third Branch of Government—the power to decide on a case-by-case basis whether the right is really worth insisting upon. A constitutional guarantee subject to future judges' assessments of its usefulness is no constitutional guarantee at all. Constitutional rights are enshrined with the scope they were understood to have when the people adopted them, whether or not future legislatures or (yes) even future judges think that scope too broad." *Id.* at 634–35. "When the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation. Only then may a court conclude that the individual's conduct falls outside the Second Amendment's

'unqualified command.'" *Bruen*, 597 U.S. at 24 (quoting *Konigsberg v. State Bar of Cal.*, 366 U.S. 36, 50 n.10 (1961)).

Importantly for this case, "[t]he Bill of Rights, including the Second Amendment, originally applied only to the Federal Government," not to Tennessee or any other state. *McDonald v. City of Chicago*, 561 U.S. 742, 754 (2010). But "[t]he constitutional Amendments adopted in the aftermath of the Civil War fundamentally altered our country's federal system. . . . the Fourteenth Amendment, provides, among other things, that a State may not abridge 'the privileges or immunities of citizens of the United States' or deprive 'any person of life, liberty, or property, without due process of law.'" *Id.* The United States Supreme Court therefore held "that the Due Process Clause of the Fourteenth Amendment incorporates the Second Amendment right recognized in *Heller*." *Id.* at 791. Accordingly, the Second Amendment applies to Tennessee.

Unlike the jurisprudence surrounding Article I, Section 26 of the Tennessee Constitution, "the inherent right of self-defense has been central to the Second Amendment right." *Heller*, 554 U.S. at 628. "[T]he codification of this right was prompted by fear that the Federal Government would disarm and thus disable the militias, but we rejected the suggestion that the right was valued only as a means of preserving the militias. On the contrary, we stressed that the right was also valued because the possession of firearms was thought to be essential for self-defense. As we put it, self-defense was 'the central component of the right itself.'" *McDonald*, 561 U.S. at 787 (citing *Heller*, 554 U.S. at 598–99). Indeed, the Court elaborated further that this right "naturally encompasses public carry. Most gun owners do not wear a holstered pistol at their hip in their bedroom or while sitting at the dinner table. Although individuals often 'keep' firearms in their home, at the ready for self-defense, most do not 'bear' (i.e., carry) them in the home beyond moments of actual confrontation. To confine the right to 'bear' arms to the home would nullify

half of the Second Amendment's operative protections." *Bruen*, 597 U.S. at 32. "The Second Amendment's plain text thus presumptively guarantees [individuals] a right to 'bear' arms in public for self-defense." *Id.* at 33.

Thus, at its most general level, the Second Amendment protects an individual's rights to both have weapons and to carry those in case of a need for offensive or defensive action with another person. Any conduct within that scope is presumed to enjoy constitutional protection unless the government can establish that the statute seeking to proscribe the conduct is within our country's historical tradition.

C. *Scope of Plaintiffs' Constitutional Challenge*

Article I, Section 26 of the Tennessee Constitution and the Second Amendment to the United States Constitution have distinct texts and histories, and therefore potentially also distinct meanings. Nevertheless, Plaintiffs do not bring their challenges to the Going Armed and Parks Statutes under the United States Constitution but only the Tennessee Constitution. First. Am. Compl., ¶ 54, at 18. Plaintiffs insist, however, that Tennessee Constitution cannot afford its citizens fewer protections with regard to the right to keep and bear arms than the United States Constitution. First. Am. Compl., ¶ 55, at 18. Thus they argue, while Article I, Section 26 may provide greater protections than the Second Amendment, the Second Amendment establishes a "floor" of protections that the Tennessee's Constitution cannot fail to also provide. First. Am. Compl., ¶ 55, at 19. For their part, Defendants agree the Second Amendment applies to this case. *See* Hearing Transcript, 77:22–25, April 30, 2025. Therefore, this Court will analyze Plaintiffs' claims under the Second Amendment.

Therefore, to prevail in either of its challenges, Plaintiffs must first establish that the conduct criminalized by a challenged statute falls within the scope of the Second Amendment.

Then, the burden lies with Defendants to justify the regulation by establishing that prohibition of the described conduct falls within our nation's historical tradition. In the combined context of the facial challenge under the Second Amendment post-*Bruen*, Defendants must demonstrate a plainly legitimate sweep of the statute as well as at least one constitutional application of the statute.

D. *Going Armed Statute*

Plaintiffs first challenge the Going Armed Statute, which reads as follows: "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). A plain reading of this statutory language shows it to criminalize the carrying of a firearm or a club with a particular intent. As such, the Going Armed Statute criminalizes conduct within the scope of the Second Amendment as discussed above. Such conduct is presumed to be constitutionally protected—in other words, this statute is presumed to be *unconstitutional*—unless Defendants can demonstrate that regulation of carrying a weapon with the intent to go armed is within the historical tradition of this nation. The Court need not go far to find the answer.

Returning to *New York Pistol and Rifle Association v. Bruen*, 597 U.S. 1 (2022), we can see that the United States Supreme Court has inquired into this question with no small level of thoroughness. The Court began its examination with medieval English regulations beginning as early as 1285, most prominently the 1328 Statute of Northampton, which "provided that, with some exceptions, Englishmen could not 'come before the King's Justices, or other of the King's Ministers doing their office, with force and arms, nor bring no force in affray of the peace, *nor to go nor ride armed* by night nor by day, in Fairs, Markets, nor in the presence of the Justices or other Ministers, nor in no part elsewhere, upon pain to forfeit their Armour to the King, and their Bodies to Prison at the King's pleasure.'" *Id.* at 40 (quoting 2 Edw. 3 c. 3 (1328)) (emphasis

added). The Court concluded these provisions largely regulated the wearing of armor and applied also to "such weapons as the 'launcegay,' a 10- to 12-foot-long lightweight lance." *Id.* at 41 (citing 7 Rich. 2 c. 13 (1383); 20 Rich. 2 c. 1 (1396); Calendar of the Close Rolls, Edward III, 1330–1333, p. 131 (Apr. 3, 1330) (H. Maxwell-Lyte ed. 1898); *id.*, at 243 (May 28, 1331); *id.*, Edward III, 1327–1330, at 314 (Aug. 29, 1328) (1896)).

Next looking to statutes in colonial Massachusetts and New Hampshire, the Supreme Court explained that these provisions commanded justices of the peace to arrest "all Affrayers, Rioters, Disturbers, or Breakers of the Peace, and such as shall ride or *go armed* Offensively . . . by Night or by Day, in Fear or Affray of Their Majesties Liege People." *Bruen*, 597 U.S. at 46 (emphasis added). These statutes, the Court elaborated, "merely codified the existing common-law offense of bearing arms to terrorize the people." *Id.* at 47. The Court then looked at three late-18th-century and early-19th-century statutes in Virginia ("no man, great nor small, [shall] go nor ride armed by night nor by day, in fairs or markets, or in other places, in terror of the Country."), Massachusetts (virtually identical to the earlier statute), and Tennessee ("any person who would 'publicly ride or go armed to the terror of the people, or privately carry any dirk, large knife, pistol or any other dangerous weapon, to the fear or terror of any person' to post a surety; otherwise, his continued violation of the law would be 'punished as for a breach of the peace, or riot at common law.'"). *Id.* at 49–50. The common thread running through these statutes, the Court explained, was that "[t]hey prohibit[ed] bearing arms in a way that spreads 'fear' or 'terror' among the people." *Id.* at 50. Thus something more was required "than merely carrying a firearm in public." *Id.*

The Court also looked at common-law offenses after the ratification of the Second Amendment in 1791:

> As during the colonial and founding periods, the common-law offenses of "affray" or going armed "to the terror of the people" continued to impose some limits on

> firearm carry in the antebellum period. But as with the earlier periods, there is no evidence indicating that these common-law limitations impaired the right of the general population to peaceable public carry.

Id. at 50–51. The Supreme Court also examined statutory offenses in the early to mid-19th century and concluded "history reveals a consensus that States could *not* ban public carry altogether." *Id.* at 53. For example, it noted the Georgia Supreme Court's conclusion as to the constitutionality of an 1837 statute that "broadly prohibited 'wearing' or 'carrying' pistols 'as arms of offence or defence'" was that a prohibition on such carrying *secretly* was valid but to the extent it prohibited "bearing arms *openly*," the provision was "in conflict with the Constitutio[n] and *void*." *Id.* at 54 (quoting *Nunn v. State*, 1 Ga. 243 (1846)) (emphasis in original).

Thus, we can see that "[t]he Second Amendment guaranteed to 'all Americans' the right to bear commonly used arms in public subject to certain reasonable, well-defined restrictions." *Id.* at 70. And one such restriction with a considerable history in the Anglo-American tradition was the prohibition on "going armed." *Id.* As such, it would seem that the restriction contained in the Going Armed Statute on carrying "with the intent to go armed" is constitutional. But a review of Tennessee jurisprudence quickly demonstrates that "going armed" means something quite different in Tennessee from "bearing arms in a way that spreads 'fear' or 'terror' among the people."

In *Moorefield v. State*, 73 Tenn. (5 Lea) 348, 348 (1880), the Tennessee Supreme Court examined "an indictment for unlawfully carrying a pistol." "The object of the [criminal] statute," the Court explained, was "to prevent carrying a pistol with a view of being armed and *ready for offense or defense in case of conflict with a citizen*, or wantonly to go armed." *Id.* at 349 (holding that borrowing a pistol to hunt an animal and returning it afterward did not constitute going armed) (emphasis added); *Liles v. State*, 198 S.W. 243, 243 (Tenn. 1917) (stating the same); *Heaton v.*

State, 169 S.W. 750, 751 (Tenn. 1914) (stating the same); *see also State v. Foster*, No. E2020-00304-CCA-R3-CD, 2021 WL 3087278, at *24 (Tenn. Crim. App. July 22, 2021) (concluding that carrying a handgun to the location where the defendant overheard by telephone an altercation wherein "his mother was being 'beat on'" by a third-party was by itself sufficient to support a determination that the defendant had the intent to go armed). More recently, the Tennessee Court of Criminal Appeals held that a defendant carrying a pistol for self-defense was "go[ing] armed." *Taylor v. State*, 520 S.W.2d 370, 371 (Tenn. Crim. App. 1974); *see also State v. Pewitte*, No. W2013-00962-CCA-R3-CD, 2014 WL 1233030, at *8 (Tenn. Crim. App. Mar. 25, 2014) (stating the same). And indeed, in *State v. Waycaster*, 566 S.W.2d 846, 846 (Tenn. 1977), the defendant was convicted for carrying a pistol for the purpose of going armed after admission of "carrying the pistol, which was fully loaded." While the Court of Criminal Appeals reversed the conviction because the "arrest was unlawful, . . . the pistol should not have been admitted in evidence, and . . . the charges should [have] be[en] dismissed," the Supreme Court reinstated the conviction, determining that those issues had not been raised and were therefore waived. *Id.* at 846–47; *see also State v. Watkins*, No. W2015-02095-CCA-R3-CD, 2017 WL 1294890, at *7 (Tenn. Crim. App. April 5, 2017) (rejecting the defendant's argument that he could not have had "the intent to go armed" since "he was at work [at Chick-Fil-A] when the firearm and drugs were found [in his bedroom] because of "[t]he presence of the loaded revolver in close proximity to the substantial amount of marijuana, the plastic bags commonly used to package drugs, the digital scales, and the assorted ammunition was sufficient evidence for the jury to infer that [the defendant] possessed this firearm with the intent to go armed during the commission of a dangerous felony").

The Going Armed Statute by, its use of the phrase "the intent to go armed," far from criminalizing an intent to terrorize the people, instead criminalizes an intent to "carry 'for the

purpose . . . of being armed and ready for offensive or defensive action in a case of conflict with another person." *Compare District of Columbia v. Heller*, 554 U.S. 570, 581 (2008); *Bruen*, 597 U.S. at 32, *with Moorefield*, 73 Tenn. (5 Lea) at 348; *Liles*, 198 S.W. at 243; *Heaton v. State*, 169 S.W. at 751; *Taylor*, 520 S.W.2d at 371. In other words, the Going Armed Statute criminalizes the entire right-to-*bear*-arms portion of the Second Amendment. Inherently, there can be no tradition of such a regulation in our history, nor can there be any legitimate sweep to such a statute.

Defendants' arguments to the contrary are unpersuasive because they make no defense of nor even address the constitutional infirmity at the heart of the statute—the criminalization of the constitutional right to bear arms. "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.'" *Bruen*, 597 U.S. at 70 (quoting *McDonald*, 561 U.S. at 780); *see also Bliss v. Commonwealth*, 12 Ky. 90, 92 (1822) ("The right existed at the adoption of the constitution; it had then no limits short of the moral power of the citizens to exercise it, and it in fact consisted in nothing else but in the liberty of the citizens to bear arms. Diminish that liberty, therefore, and you necessarily restrain the right . . . ."). While Defendants, in pointing to the facial challenge standard, are correct that the statute might constitutionally apply to an individual carrying a grenade with the intent to go armed because the Second Amendment likely does not protect the right of any citizen to keep and bear a grenade, *see* Hearing Transcript, 82:5–83:12, Defendants do not satisfy their flipped burden under *Bruen* and have in no way demonstrated a plainly legitimate sweep for proscribing *in toto*, subject to narrow exceptions in subsequent subsections, the right to bear arms.

Accordingly, this Court holds that the Going Armed Statute violates the Second Amendment to the United States Constitution and therefore also violates Article I, Section 26 of

the Tennessee Constitution. With respect to the Going Armed Statute, Plaintiffs' Motion for Summary Judgment is hereby **GRANTED**, and Defendants' Motion for Summary Judgment is hereby **DENIED**.

E. *Parks Statute*

We now turn to the second statute challenged by Plaintiffs, which reads as follows:

> 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),[34] 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). As with the Going Armed Statute, this statute criminalizes carrying—or merely possessing—a weapon with the intent to go armed. The language "not used solely for instructional, display or sanctioned ceremonial purposes" creates a narrow exception to this regulation that is essentially irrelevant to the present case.[35] Finally, the statute lists the areas in which this regulation applies.

The Court incorporates its above analysis under the Going Armed Statute into its examination of the Parks Statute. As such, the Parks Statute is likewise unconstitutional unless another exception within our nation's historical tradition applies because of the limited application of the regulation to certain geographical areas. Defendants argue that such an exception does apply—the sensitive places doctrine.

[34] The Parks Statute applies not just to those weapons prohibited by § 39-17-1302(a), none of which Plaintiffs have expressed an interest in carrying, but also "prohibits possession of other types of weapons on [public] recreational property . . . at any time the person's conduct does not strictly conform to the requirements of Tenn. Code Ann. § 39-17-1311(b)(1)." Tenn. Op. Att'y Gen. No. 18-04, 2018 WL 780594, at *2 (Tenn. A.G. Jan. 31, 2018).

[35] It is not clear how one might have the intent to go armed with a weapon "used solely for instructional, display or sanctioned ceremonial purposes" under either the traditional Tennessee meaning of going armed or the meaning articulated in *Bruen*. The only workable meaning would seem to be an intent to possess or carry the weapon, which in light of the statutory language "to possess or carry" would render "with the intent to go armed" as "intentionally."

The sensitive places doctrine permits the government to constitutionally prohibit the possession of firearms, thus lawfully requiring citizens to surrender the "central component" of their Second Amendment rights by foregoing the right to keep and bear arms in self-defense, when in such locations. *Columbia Housing & Redevelopment Corp. v. Braden*, 663 S.W.3d 561, 566–67 (Tenn. Ct. App. 2022) (quoting *Heller*, 554 U.S. at 599). "Under this exception, numerous courts have held that laws 'forbidding the carrying of firearms in sensitive places such as schools and government buildings' do not violate the Second Amendment." *Id.* at 567 (quoting *Heller*, 554 U.S. at 626; *Bruen*, 142 S. Ct. at 2133). Plaintiffs assert that "public parks are not within the scope of what *Bruen* and *Heller* discussed as a possible sensitive place." The parties vigorously dispute numerous facts surrounding the development of public parks in determining whether our nation has a historical tradition of restricting firearms in parks in light of the following discussion from the United States Supreme Court:

> Consider, for example, *Heller*'s discussion of "longstanding" "laws forbidding the carrying of firearms in sensitive places such as schools and government buildings." Although the historical record yields relatively few 18th- and 19th-century 'sensitive places' where weapons were altogether prohibited—e.g., legislative assemblies, polling places, and courthouses—we are also aware of no disputes regarding the lawfulness of such prohibitions. We therefore can assume it settled that these locations were "sensitive places" where arms carrying could be prohibited consistent with the Second Amendment. And courts can use analogies to those historical regulations of "sensitive places" to determine that modern regulations prohibiting the carry of firearms in new and analogous sensitive places are constitutionally permissible.

Bruen, 597 U.S. at 30 (quoting *Heller*, 554 U.S. at 626); *Braden*, 663 S.W.3d at 567 (quoting *Bruen*, 142 S. Ct. at 2133) ("[W]hen determining whether a place is a 'sensitive place,' courts should look to those places where weapons were historically 'altogether prohibited' and determine whether it is 'settled that [certain] locations were "sensitive places,"' then 'use analogies to those historical regulations of "sensitive places" to determine [whether] modern regulations prohibiting

the carry of firearms in new and analogous sensitive places are constitutionally permissible.'"); *see also United States v. Rahimi*, 602 U.S. 680, 692 (2024) (quoting *Bruen*, 597 U.S. at 30) ("And when a challenged regulation does not precisely match its historical precursors, 'it still may be analogous enough to pass constitutional muster.' The law must comport with the principles underlying the Second Amendment, but it need not be a 'dead ringer' or a 'historical twin.'"). *But see Range v. Att'y Gen. United States*, 124 F.4th 218, 229–30 (3d Cir. 2024) (quoting *Bruen*, 597 U.S. at 31) (explaining "historical restrictions on firearms in 'sensitive places' do not empower legislatures to designate any place "sensitive" and then ban firearms there").

Defendants assert the existence of a substantial history of firearm regulation in public parks, pointing to a significant number of statutes. Plaintiffs, on the other hand, argue these statutes are irrelevant because they were not enacted until around the time of the Civil War or later. This is presently a live dispute amongst our nation's courts and legal scholars. *Bruen*, 597 U.S. at 37–38 (citing A. Amar, *The Bill of Rights: Creation and Reconstruction* xiv, 223, 243 (1998); K. Lash, *Re-Speaking the Bill of Rights: A New Doctrine of Incorporation*, 97 Ind. L. J. 1439, 1441 (2022)) ("We also acknowledge that there is an ongoing scholarly debate on whether courts should primarily rely on the prevailing understanding of an individual right when the Fourteenth Amendment was ratified in 1868 when defining its scope (as well as the scope of the right against the Federal Government). We need not address this issue today because, as we explain below, the public understanding of the right to keep and bear arms in both 1791 and 1868 was, for all relevant purposes, the same with respect to public carry."). *Compare Antonyuk v. James*, 120 F.4th 941, 973–74 (2d Cir. 2024) (quoting *Nat'l Rifle Ass'n v. Bondi*, 61 F.4th 1317, 1322 (11th Cir. 2023), *vacated by* 72 F.4th 1346 (11th Cir. 2023) (*en banc*); *Wolford v. Lopez*, 116 F.4th 959, 980 (9th Cir. 2024) (*certiorari pending* (U.S. Apr. 3, 2025)) ("'[T]he understanding that prevailed when the

States adopted the Fourteenth Amendment"—is, along with the understanding of that right held by the founders in 1791, a relevant consideration."), with *Lara v. Comm'r Penn. State Police*, 91 F.4th 122, 134 (3d Cir. 2023), *cert. granted, judgment vacated*, 2024 WL 4486348, (U.S. Oct. 15, 2024) (stating "that 'the Second Amendment should be understood according to its public meaning in 1791,' and not 1868"). While this Court would be inclined towards concluding that only the 1791 date is relevant to determining the meaning of the Second Amendment—because we do not see how simply incorporating the same right against the states in 1868 provides a basis for changing what it means—such a conclusion is unnecessary because we are also of the opinion that the parties' dispute over when and how parks developed is a red herring. The regulation of sensitive places has already been determined by the Supreme Court of the United States to be within our country's historical tradition. *Bruen*, 597 U.S. at 30 (quoting *Heller*, 554 U.S. at 626).

Thus, the question here is not whether parks were understood to be a location where firearms were regulated in 1791 (or in 1868) but whether "the grounds of any public park, playground, civic center or other building facility, area or property owned" by the state or local government "for recreational purposes" are sufficiently like a school, legislative assembly, polling place, or courthouse so as to require citizens to "surrender the 'central component' of their Second Amendment rights." In answering this question, a court ought to be "mindful of the Supreme Court's caution against construing too broadly the category of 'sensitive places such as schools and government buildings,' as it would 'eviscerate the general right to publicly carry arms for self-defense.'" *Reese v. Bureau of Alcohol, Tobacco, Firearms, & Explosives*, 127 F.4th 583, 597 (5th Cir. 2025) (quoting *Bruen*, 597 U.S. at 30–31). Accordingly, we ought not grasp onto any passing similarity between known sensitive locations and those that potentially might be so. Instead, the

Court must carefully consider what makes the known locations sensitive and apply that criteria towards the statutorily identified locations.

The common thread between a legislative assembly, polling place, and courthouse is plain as essential functions of a republican government are performed in those places. *See* David B. Kopel & Joseph G.S. Greenlee, *The "Sensitive Places" Doctrine: Locational Limits on the Right to Bear Arms*, 13 Char. L. Rev. 205, 244–47 (Winter 2018) (explaining how polling places and courthouses became constitutionally sensitive places to prevent "violent intimidation" of voters or courts of justice). Schools present a more difficult category to quantify because they are a category of one. The applicable quality could be the presence of children, as Defendants argue. Or it could be the fact that parents must surrender their children to the custody government officials at the command of the government, and so there is greater responsibility of the state to protect such places. This issue is complicated by the apparent lack of historical "support for *Heller*'s designation of 'schools' as sensitive places where arms carrying may be banned." Kopel & Greenlee, 13 Char. L. Rev. at 252. The first known ban occurred in 1824 at the University of Virginia because the students there "had driven Thomas Jefferson, founder of the University, to despair with their spoiled and violent behavior. They rioted and caroused, fired guns in the air, and shot at each other." Kopel & Greenlee, 13 Char. L. Rev. at 250.

> So . . . the Board of Visitors—which included Jefferson and James Madison—cracked down. They banned students (but not faculty or other employees) from keeping on school premises any alcohol, chewing tobacco, or weapon, and also forbade students from having servants, horses, or dogs. Because the ban was for students only, and not for faculty and staff, the 1824 discipline is not a precise fit in the "sensitive places" history.

Kopel & Greenlee, 13 Char. L. Rev. at 250. New Jersey subsequently banned "places of amusement" around two college campuses, which included pistol ranges, but these bans did not prohibit students from keeping or carrying arms on campus. Kopel & Greenlee, 13 Char. L. Rev.

at 250–51. In 1878, Mississippi banned students from carrying *concealed* weapons at any university, college, or school. Kopel & Greenlee, 13 Char. L. Rev. at 251. But the ban did not apply to open carrying or to faculty or staff. Kopel & Greenlee, 13 Char. L. Rev. at 251–52. There unfortunately is little here to allow for an analogy to be made. A different view of the school bans on firearms suggests that it did not stem from schools being a sensitive location, but rather the school acting *in loco parentis* for the students, thus having the authority to regulate the students' possession of firearms. *See Lara v. Comm'r Penn. State Police*, 125 F.4th 428, 451 (3d Cir. 2025) (Restrepo, J., dissenting) ("[T]his authority was not predicated on or justified by the student's presence at a sensitive location, but rather stemmed from the inherent power of the authority standing in loco parentis to dictate all but the most fundamental rights of the infants under its charge. . . . history suggests that any right an infant may have had to bear arms could be abrogated in its entirety at the pleasure of the infant's parent or an authority standing *in loco parentis*."). In support of this view, Judge Restrepo cited Blackstone's *Commentaries* and noted that, in addition to the University of Virginia, the Universities of Georgia and North Carolina also prohibited possession of firearms by students around that same time. *Id.* at 450. The point that the ban was limited to students in all cases is a compelling argument that it was a matter of schools acting *in loco parentis* rather than a location-based exception to the right to keep and bear arms.

The Court now turns to the locations listed in the Parks Statute: "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). In our view, none of these locations is analogous to a school, legislative assembly, polling place, or courthouse. These places are first and foremost recreational, which is to say that while they are important to the health and well-being of the

citizenry, they are not so vital to the continued functioning of our republic such that an armed individual could direct or alter the exercise of essential government powers through violent intimidation. And while children are present in these locations, particularly at a playground, parents are not compelled by the state to leave their children there in government custody. Attendance at such locations is voluntary, and parents may continue to watch over their children. Thus, none of the enumerated locations are sufficiently similar to a school to justify analogizing the regulation of firearms on school campuses to regulating firearms in the enumerated places.

The qualifying phrase "for recreational purposes" at the end of the statutory text is also instructive.

> In the absence of some other indication, the modifier reaches the entire enumeration. . . .
>
> Consider application of the series-qualifier canon to the following phrases:
>
> - *Charitable institutions or societies*—held, that *charitable* modifies both *institutions* and *societies*.
> - *Internal personnel rules and practices of an agency*—held, that *internal personnel* modifies both *rules* and *practices*, and *of an agency* held to modify both nouns as well.
>
> . . . .
>
> Similar results obtain with postpositive modifiers (that is, those "positioned after" what they modify) in simple constructions:
>
> - *Institutions or societies that are charitable in nature* (the institutions as well as the societies must be charitable).
> - *A wall or a fence that is solid* (the wall as well as the fence must be solid).
> - *A corporation or partnership registered in Delaware* (a corporation as well as a partnership must be registered in Delaware).
>
> The typical way in which syntax would suggest no carryover modification is that a determiner (*a, the, some*, etc.) will be repeated before the second element:
>
> - *The charitable institutions or the societies* (the presence of the second *the* suggests that the societies need not be charitable).
> - *A solid wall or a fence* (the fence need not be solid).
> - *Delaware corporations and some partnerships* (the partnerships may be registered in any state).
> - *To clap and to cheer lustily* (the clapping need not be lusty).

Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts*, § 19, at 147–49 (2012) (italics in original) (footnotes omitted). The qualifying phrase in this statute thus likely modifies each location, limiting their application to recreational purposes. Assuming the phrase only modifies the catch-all at the end of the list, however, we can still glean a similar intent from the General Assembly. A "park" is defined in the *Random House Dictionary of the English Language*[36] as "an area of land, usually in a large natural state, for the enjoyment of the public, having facilities for rest and recreation, often owned, set apart, and managed by a city, state, or nation." *Park*, The Random House Dictionary of the English Language 1411 (2d ed. unabridged 1987). A "playground" is likewise defined as "an area used for outdoor play or recreation, esp. by children, and often containing recreational equipment such as slides and swings." *Playground*, The Random House Dictionary of the English Language 1485. A "civic center" is defined[37] as "a building complex housing a theater or theaters for the performing arts and sometimes exhibition halls, a museum, etc., and usually constructed or maintained by municipal funds." *Civic center*, The Random House Dictionary of the English Language 378. These listed areas are all defined as recreational, with two of three even using the word in the definition. The term certainly still applies

[36] Justice Scalia and Bryan Garner list this dictionary as one recommended for statutory language from 1951 through 2000. *See* Scalia & Garner, *Reading Law*, App'x A, at 423; *see EPA v. Calumet Shreveport Refining, LLC*, 145 S. Ct. 1735, 1750 (2025) (citations omitted) ("To understand the phrase . . . we again turn to ordinary meaning. In particular, we look to the plain meaning of this phrase's component words, which are all terms of everyday usage.").

[37] A secondary definition, however, is "a building or building complex containing a municipality's administrative offices, various departmental headquarters, courts, etc., and sometimes an auditorium, libraries, or other community or cultural facilities." *Civic center*, The Random House Dictionary of the English Language 378. This secondary meaning would seemingly allow some hypothetical instances of a constitutional application of the Parks Statute for the use of a civic center as a court. The definition provided in the body of this order, however, is the meaning "most frequently encountered." The Random House Dictionary of the English Language, *How to Use the Random House Dictionary: III. Definitions*, at xxxii; Scalia & Garner, *Reading Law*, App'x A, at 418 ("You must consult the prefatory material to understand the principles on which the dictionary has been assembled."). Reliance on the primary definition as the applicable one in this instance is further buoyed by the recreational grounds and facilities "civic center" is listed alongside. *See* Tenn. Code Ann. § 39-17-1311(a); *Calumet Shreveport Refining, LLC*, 145 S. Ct. at 1750 ("And, we read these words 'in their context and with a view to their place in the overall statutory scheme.'"); Scalia & Garner, *Reading Law*, App'x A, at 418 ("Because common words typically have more than one meaning, you must use the context in which a given word appears to determine its aptest, most likely sense."),

to the definition for civic center, though it is not explicitly included. *See Recreation*, The Random House Dictionary of the English Language 1613 (defining "recreation" as "refreshment by means of some pastime, agreeable exercise, or the like" or "a pastime, diversion, exercise, or other resource affording relaxation and enjoyment"). The statute's caption in the Code, while by no means determinative, is also supportive of this understanding: "Carrying or possession of weapons; public recreational areas." *See* Tenn. Code Ann. § 39-17-1311.

We reiterate the words of Justice Neil Gorsuch in his concurring opinion in *Rahimi*:

> When the people ratified the Second Amendment, they surely understood an arms-bearing citizenry posed some risks. But just as surely they believed that the right protected by the Second Amendment was itself vital to the preservation of life and liberty. We have no authority to question that judgment. As judges charged with respecting the people's directions in the Constitution—directions that are "trapped in amber,"—our only lawful role is to apply them in the cases that come before us. Developments in the world may change, facts on the ground may evolve, and new laws may invite new challenges, but the Constitution the people adopted remains our enduring guide.

United States v. Rahimi, 602 U.S. 680, 709 (2024) (Gorsuch, J., concurring) (citations omitted). The Constitution itself is, of course, not "trapped in amber." But we are not the ones authorized to change it. *See* U.S. Const. art. V.

Accordingly, we conclude the Parks Statute violates the Second Amendment to the United States Constitution and therefore also violates Article I, Section 26 of the Tennessee Constitution. Plaintiffs' Motion for Summary Judgment is hereby **GRANTED** with respect to the Parks Statute, and Defendants' Motion for Summary Judgment is consequently **DENIED**.

IV. Scope of the Relief

Finally, Defendants argue that this Court lacks the authority to grant the relief sought by Plaintiffs: namely a declaration that the Going Armed and Parks Statutes are invalid statewide. First, Defendants assert that the relief must be narrowly tailored to Plaintiffs and their

constitutional injuries. *See Harris v. State*, 765 S.W.2d 662, 666 (Tenn. 1994) (citing *United States v. Morrison*, 449 U.S. 361, 364–65 (1981)) (noting that "remedies should be tailored to the injury suffered from the constitutional violation"). Defendants further argue that the relief ought to be limited based upon the Declaratory Judgments Act itself. *See* Tenn. Code Ann. § 29-14-107 ("When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceedings."). Neither argument is persuasive under the circumstances of this case. Plaintiffs deliberately did not bring as-applied challenges to the Going Armed and Parks Statutes. They brought facial challenges, and they have prevailed. It is difficult to envision any purpose to a declaratory invalidation of statutory text on the basis of a constitutional right—not limited by any particular facts or circumstances as would be the case in as-applied challenges—that is nonetheless limited in effect to only a handful of citizens. Without a challenge to a specific application that inherently might limit the declaratory relief to a specific set of facts, we discern no basis for allowing the continued application of the challenged statutes against other Tennesseans when we have concluded that the statute's prohibitions are without any legitimate sweep.

Furthermore, as Plaintiffs point out, the Declaratory Judgments Act prohibits declarations that *prejudice* nonparties. Plaintiffs here have vindicated their constitutional rights. No government official, or the public for that matter, has a legitimate interest in the enforcement of unconstitutional laws. Tennesseans that are not party to this action may unintentionally benefit from the protection of their constitutional rights, but no right of theirs could be prejudiced by the relief sought by Plaintiffs. Accordingly, we do not limit the scope of the declaratory relief sought by and now granted to Plaintiffs.

CONCLUSION

For the foregoing reasons, Plaintiffs' Motion for Summary Judgment is **GRANTED**, and Defendants' Motion for Summary Judgment is **DENIED**. As a result, the Going Armed Statute, Tenn. Code Ann. § 39-17-1307(a),[38] and the Parks Statute, Tenn. Code Ann. § 39-17-1311(a), are hereby **DECLARED** unconstitutional, void, and of no effect.

It is so ORDERED.

8-22-2025
CHANCELLOR MICHAEL MANSFIELD, Chief Judge

8/21/2025
JUDGE M. WYATT BURK

8/22/2025
JUDGE LISA MIDIFFER RICE

[38] This order has no effect on the continued application of the remaining subsections of Tenn. Code Ann. § 39-17-1307, with the exception of Subsection -1307(g), which itself is simply an exception to Subsection -1307(a).

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing document has been forwarded to the following by regular US Mail, postage pre-paid, and/or electronic mail:

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This the 22nd day of August, 2025.

Clerk & Master