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

STEPHEN L. HUGHES, DUNCAN O'MARA, ELAINE KEHEL, GUN OWNERS OF AMERICA, INC., and GUN OWNERS FOUNDATION,	)	
Plaintiffs,	)	
v.	)	**No. 24475**
BILL LEE, in his official capacity as the Governor for the State of Tennessee, JONATHAN SKRMETTI, in his official capacity as the 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, PAUL THOMAS, in his official capacity as the Sheriff of Gibson County, Tennessee, and FREDERICK AGEE, in his official capacity as the District Attorney General for Crockett, Gibson and Haywood counties.	)	**Chancellor Mansfield, Chief Judge** **Judge Burk** **Judge Rice**
Defendants.	)	

MOTION FOR STAY OF JUDGMENT PENDING APPEAL

In the clarifying light of *Bruen*, the constitutional infirmities of some of Tennessee's gun laws are hard to miss. But despite the cracks, § 1307(a) is still load bearing. Without it, important and constitutionally-sound pieces of Tennessee law disappear. By issuing an order that purports to erase the subsection in its entirety, as well as § 39-17-1311(a), the Court has eliminated

constitutional applications of Tennessee's gun laws without regard for the legitimate decisions of the people's elected representatives.

For example, the Court's order appears to do away with any state law obstacle to a ten-year-old bringing a semi-automatic rifle to his rec league basketball game. The order similarly appears to erase any state legal prohibition against a shotgun-bearing drunk stumbling through a crowd on Broadway, or across Market Square, or through Shelby Farms. Prohibitions on such reckless conduct are plainly consistent with the Constitution as well as the preferences of the people of Tennessee. But these reasonable, prudent, and lawful policy decisions are swallowed by the Court's broad order.

The Court should stay its order and give Tennessee's appellate courts a chance to review its deletion of statutory language and clarify, in an opinion that will indisputably bind other courts and all state officials, the appropriate outcome of this constitutional challenge.

LEGAL STANDARD

When an appeal is taken by a state officer, "the judgment may be stayed in the court's discretion" without a bond. Tenn. R. Civ. P. 62.06. While no published Tennessee authority governs the exercise of that discretion, federal courts consider "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Nken v. Holder*, 556 U.S. 418, 434 (2009).

ARGUMENT

In its haste to erase statutory provisions in their entirety, the Court ignored at least two longstanding limits on judicial authority. First, the Court invented a new test for facial challenges,

functionally requiring Defendants to prove the statutes are constitutional in every application. That test directly contradicts the well-settled standard that the United States Supreme Court reiterated last year in a facial challenge rooted in the Second Amendment: "to prevail, the Government need only demonstrate that [the statute] is constitutional in some of its applications." *United States v. Rahimi*, 602 U.S. 680, 693 (2024). Federal courts have demonstrated the feasibility of implementing that clear holding. *See, e.g., LaFave v. County of Fairfax, Va.*, __ F.4th __, 2025 WL 2458491, at *4 (4th Cir. Aug. 27, 2025) (holding it is "enough for us to reject the facial challenge to the parks restriction" that there are preschools on park property); *see also Wolford v. Lopez*, 116 F.4th 959, 984 (9th Cir. 2024) (applying *Rahimi*'s facial challenge standard to a prohibition on firearms in parks). And Tennessee courts have traditionally respected their own limits by approaching facial challenges the same way. *See, e.g.*, *Fisher v. Hargett*, 604 S.W.3d 381, 397-98 (Tenn. 2020). Indeed, "[t]he Court must uphold the constitutionality of a statute wherever possible." *Willeford v. Klepper*, 597 S.W.3d 454, 465 (Tenn. 2020). The Court defied these limits when it declared the statutes unconstitutional despite acknowledging they are valid in some applications. *See, e.g.,* Order, at 31.

Second, in its effort to deliver universal relief, the Court exceeded the constitutional bounds of the judicial power to decide concrete disputes between real parties. "Courts do not rewrite, amend, or strike down statutes." *Lindebaum v. Realgy, LLC*, 13 F.4th 524, 526 (6th Cir. 2021). "Remedies operate with respect to specific parties," not "on legal rules in the abstract." *California v. Texas*, 593 U.S. 659, 672 (2021) (quoting *Murphy v. NCAA*, 584 U.S. 453, 489 (2018) (Thomas, J., concurring)); *see also Trump v. Casa, Inc.*, 145 S.Ct. 2540, 2552 (2025) (neither declaratory nor injunctive relief can directly interfere with enforcement of a contested statute except with respect to particular plaintiffs). A court's job is "to say what the law is" by "apply[ing] the rule to

particular cases." *Marbury v. Madison*, 5 U.S. 137, 177 (1803). So Tennessee courts follow the "general rule that remedies should be tailored to the injury suffered." *Harris v. State*, 875 S.W.2d 662, 666 (Tenn. 1994). By ignoring a fundamental constitutional limit, this Court's order threatens the separation of powers at the heart of Tennessee government. *See* Tenn. Const. art. II.

On these two issues alone, Defendants have made a strong showing that they will succeed on appeal.[1] And the balance of the equities and the public interest favor a stay.

By reaching beyond its defined role in our constitutional system, the Court has induced widespread uncertainty. To be sure, this Court entered no injunction, and neither Defendants nor any other law enforcement officer has been commanded to cease enforcing the statutes. *Steffel v. Thompson*, 415 U.S. 452, 471 (1974) (though a declaratory judgment "may be persuasive, it is not ultimately coercive"). So too, the decision of the Gibson County Chancery Court cannot bind the circuit and criminal courts across Tennessee who routinely adjudicate the application of the criminal laws in the cases before them.

But that has not stopped the confusion. Plaintiffs' counsel has already advised the public that "the entire law enforcement network in Tennessee [is] on notice" and "attempts to enforce these two statutes" by any official "should give rise to claims of federal civil rights violations." Harris, John, *Hughes v. Lee—Do We Now Have Constitutional Carry?*, Tennessee Firearms Association (August 23, 2025), https://perma.cc/N29G-WJ7E. Law enforcement is rightly loath to choose between tempting ruinous civil rights lawsuits and carrying out their duty to protect the public. And there is no doubt: because of its refusal to adhere to its own judicial limits, this Court's order would leave large gaps in the General Assembly's efforts to protect the public.

[1] Defendants' briefing at summary judgment provides grounds to conclude they are likely to succeed on additional issues on appeal.

For example, if the Guns in Parks and Going Armed statutes are "void, and of no effect," there is no law in Tennessee against children bringing semi-automatic rifles to a pickup basketball game at their community center. While the General Assembly has enacted a different law that prevents children from possessing *handguns* without supervision, Tenn. Code Ann. § 39-17-1319(b), it relies on the backdrop of the Going Armed and Guns in Parks statutes to ensure that community basketball courts do not look like Shiloh circa 1862.

Another example: if the statutes are "void, and of no effect," there is no Tennessee law against a drunk wandering with his shotgun down Broadway in Nashville, or through Shelby Farms in Memphis, or across Market Square in Knoxville. The Going Armed statute has prohibited that. Tenn. Code Ann. § 39-17-1307(a)(1). The General Assembly has a law criminalizing possessing a handgun while under the influence, Tenn. Code Ann. § 39-17-1321(a). But, relying on the Going Armed statute, the legislature did not see a need to separately criminalize possessing a long gun while under the influence.

Defendants have acknowledged that there are unconstitutional applications of these statutes. Ds' MSJ, at 16. But there are also many examples of constitutional applications that protect the public. *See, e.g.,* Ds' MSJ, at 11-30 (carry of dangerous and unusual weapons, protection of schools and government buildings, carry by felons, going armed "to the terror of the people," protection of polling places). By choosing the path of maximum disruption to Tennessee's statutory scheme, the Court has created unnecessary confusion and risk.

This Court can cure these problems simply by entering a stay of its judgment pending appeal. Tennessee's appellate courts will soon be able to review the merits of this case and the metes and bounds of the judicial power.

Plaintiffs, who took two years to bring this case to summary judgment and do not enjoy an injunction in their favor, will not be prejudiced by a stay pending appeal. And the dangers to public safety and the rule of law resulting from continued confusion far outweigh any prejudice.

When contacted for Plaintiffs' position on this motion, counsel for Plaintiffs responded: "Plaintiffs have not been provided a copy of this motion nor any supporting materials, however, Plaintiffs' counsel has advised in writing that they will not consent to any stay of the trial court's declaratory judgment ruling."

REQUEST FOR IMMEDIATE DECISION

The State Defendants request that this Court hear and decide its motion for a stay immediately, or in any event no later than September 11, 2025. Defendants are available for telephonic hearing at the Court's request, but they waive a hearing on this motion in the interest of speed. If the Court has not ruled on this motion by September 11, 2025, Defendants will consider it an effective denial and seek intervention by the appellate courts.

CONCLUSION

This Court should stay its order under Tenn. R. Civ. P. 62.06 until Tennessee's appellate courts have the chance to review this Court's extraordinary exercise of the judicial power.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing was filed with the clerk and served by mail with a courtesy copy sent by email, on this the 2nd day of September 2025, upon:

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I further certify that, pursuant to the Court's order, courtesy copies of the foregoing were provided to:

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