SC99290

IN THE SUPREME COURT OF MISSOURI

CITY OF ST. LOUIS, ST. LOUIS COUNTY, and JACKSON COUNTY,

Appellants,

v.

STATE OF MISSOURI and ERIC SCHMITT, Attorney General of Missouri,

Respondents.

ON APPEAL FROM THE CIRCUIT COURT OF COLE CITY
NINETEENTH JUDICIAL CIRCUIT
The Honorable Daniel R. Green, Circuit Judge

BRIEF OF GUN OWNERS OF AMERICA, INC., GUN OWNERS FOUNDATION, AND FREEDOM CENTER OF MISSOURI AS *AMICI CURIAE* IN SUPPORT OF THE RESPONDENT

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INTRODUCTION

The possession of marijuana is a federal crime. Nevertheless, in 2018 St. Louis City's Circuit Attorney announced that she would largely cease prosecuting cases in which suspects were accused of possessing less than 100 grams of marijuana. Jim Salter, *St. Louis to End Prosecution of Low-Level Marijuana Crimes*, ASSOCIATED PRESS, June 13, 2018, https://apnews.com/article/6f09ce3e02c7498d90a97dcd14282517. In response, a spokesperson for the St. Louis Metropolitan Police Department announced that its officers would continue to enforce the laws against the possession of marijuana. Later that year, Missourians overwhelmingly ratified a state constitutional amendment that legalized the possession, cultivation, and sale of marijuana for medical purposes. *See* Mo. Const. Art. XIV. Following the ratification of Article XIV, Jackson County's Prosecuting Attorney announced that she would also stop prosecuting cases in which the defendant was charged with simple possession of marijuana. Alicia Shurr, *Jackson County Will No Longer Prosecute Marijuana Cases*, MISSOURI TIMES, November 13, 2018, https://themissouritimes.com/jackson-county-will-no-longer-prosecute-marijuana-cases. On July 9, 2020, the Kansas City Council voted to repeal city ordinances making the possession of small amounts of marijuana illegal. KMBC News Staff, *City of Kansas City Removes Marijuana Violations from City Code*, KMBC.COM, July 9, 2020, https://www.kmbc.com/article/kansas-city-

removes-marijuana-violations-from-city-code/33261339. On April 13, 2021, the St. Louis County Council decriminalized the possession of small amounts of marijuana. Nassim Benchaabane, *St. Louis County, Maplewood Join Area Cities Cutting Penalties for Minor Marijuana Possession*, ST. LOUIS POST-DISPATCH, April 15, 2021, https://www.stltoday.com/news/local/govt-and-politics/st-louis-county-maplewood-join-area-cities-cutting-penalties-for-minor-marijuana-possession/article_74c666c9-987c-52bc-8886-30015ef04d40.html. On December 13, 2021 - just eight days before the Municipalities filed their initial brief in this appeal - the mayor of Appellant City of St. Louis signed into law a bill that repealed city ordinances outlawing the possession of marijuana and that prohibits the City's police officers from enforcing state and federal laws against the possession of small amounts of the drug. Mark Schlinkmann, *Mayor Signs Bill Repealing St. Louis Ban on Possessing Small Amounts of Marijuana*, ST. LOUIS POST-DISPATCH, https://www.stltoday.com/news/local/crime-and-courts/mayor-signs-bill-repealing-st-louis-ban-on-possessing-small-amounts-of-marijuana/article_50f2caed-028d-5956-8639-04c9856392e3.html.

This overview of the recent history of marijuana decriminalization in St. Louis City, St. Louis County, and Jackson County reveals that the Appellants in this case have, through their own quite recent actions, demonstrated a clear understanding of the difference between, on the one hand, preventing the

federal government from enforcing its own criminal laws and, on the other hand, deciding that state or local resources should not be expended to assist the federal government in enforcing its criminal laws. The Municipalities were absolutely within their rights to decide that they would no longer devote their taxpayers' resources or officers' time to assisting in the enforcement of federal laws prohibiting the possession of marijuana, so long as they did not actively interfere with federal officials' efforts to enforce the federal prohibition.

The General Assembly made a similar – and similarly constitutional! – policy choice when it came to federal firearm laws. The General Assembly was well aware that the Supremacy Clause would not allow a state to prevent federal officials from enforcing federal law, and SAPA includes no provision that would interfere with federal efforts to enforce these laws. But SAPA takes its place in a long history of state legislatures voicing disagreement with federal laws and policies, sometimes declining to assist in the enforcement of such laws. As such, SAPA is squarely in line with the principles of federalism on which this nation was founded. The Municipalities' Petition and legal filings have stated reasons why they disagree with the General Assembly's sentiments and the policy decision that flowed therefrom, but they have not in any way shown that either the U.S. Constitution or Missouri Constitution prevents the General Assembly from expressing those sentiments and enacting its chosen policy. This Court should affirm the Circuit Court's judgment.

INTEREST OF THE *AMICI CURIAE*

Gun Owners of America, Inc. ("GOA") is a nonprofit social welfare organization, exempt from federal income tax under Internal Revenue Code ("IRC") section 501(c)(4). Gun Owners Foundation ("GOF") is a nonprofit educational and legal organization, exempt from federal income tax under IRC section 501(c)(3). GOA and GOF were established, inter alia, for the purpose of participating in the public policy process, including conducting research, and informing and educating the public on the proper construction of state and federal constitutions, as well as statutes related to the rights of citizens, and questions related to human and civil rights secured by law. Together, GOA and GOF have more than two million members and supporters nationwide, including many within the state of Missouri who benefit from the statute at issue. GOA and GOF have advanced and advocated the adoption of statutes and ordinances across the country which establish Second Amendment sanctuaries or protections, and thereafter have defended those enactments from legal challenge.

The Freedom Center of Missouri is a non-profit, non-partisan organization dedicated to research, litigation, and education for the advancement of individual liberty and the principles of limited government. The Freedom Center emphasizes the importance of the Missouri Constitution as a safeguard for individual liberty that is independent of the U.S.

Constitution's Bill of Rights and that frequently affords protections for liberty that are both more explicit and more extensive than those articulated in the U.S. Constitution's Bill of Rights. The Freedom Center litigates constitutional issues in state and federal courts and also assists citizen groups in the evaluation and drafting of statutes and constitutional amendments that would enhance individual liberty.

CONSENT OF PARTIES

This Court has granted *amici* leave to file this brief in accordance with Missouri Supreme Court Rule 84.05(f)(3).

JURISDICTIONAL STATEMENT

Amici adopt and incorporate by reference the Jurisdictional Statement set forth in the Respondent's brief.

STATEMENT OF FACTS

Amici adopt and incorporate by reference the statement of facts as set out in the Respondent's brief.

ARGUMENT OF *AMICI CURIAE*

I. The Municipalities' Petition did not properly assert several of their constitutional challenges.

The purpose of a petition is to limit and define the issues to be resolved in the case and to put the opposing party on notice of those issues. *Schumacher v. Schumacher*, 303 S.W.3d 170, 174 (Mo. App. W.D. 2010). Under Missouri law it is "well established" that courts are only authorized to grant relief that a plaintiff has requested in its pleadings. *City of Greenwood v. Martin Marietta Materials, Inc.*, 311 S.W.3d 258, 264 (Mo. App. W.D. 2010). If a party fails to raise an issue in its pleadings, the trial court may not grant judgment in the party's favor based on that issue. *Schumacher* at 174. This principle is especially important when a party asks a court to rely on a constitutional provision as the basis for granting relief. Under Missouri law, to properly raise a constitutional challenge, a party must (1) raise the question at the first opportunity; (2) state *with specificity* the constitutional provision on which the challenge rests; (3) set forth facts showing the violation; and (4) preserve the question throughout the proceedings. *Peters v. Johns*, 489 S.W.3d 262, 269 (Mo. banc 2016). Where a party's pleadings do not invoke a *specific* constitutional provision as a basis for the relief that party is requesting, the issue has not been properly preserved and it may not form the basis for any decision to grant the requested relief. *See id*.

On appeal, the Municipalities seek to challenge SAPA on the ground that it violates the "due process" protections of the federal and state constitutions. App. Br. at 38-43. However, the Municipalities' Petition is completely devoid of any mention of the phrase "due process," the Fourteenth Amendment to the U.S. Constitution, or Article I, section 10 of the Missouri Constitution, much less a request for a ruling that any specific part(s) of SAPA violated the principles of due process protected by these constitutional provisions – and yet the Municipalities' Third Point Relied On invites this Court to strike down the *entire Act* on this basis that is never mentioned in the Petition. This Court has no authority to accept this invitation. To the contrary, it should disregard the Municipalities' Third Point Relied On not only because the Municipalities failed to properly raise the issue in their pleadings,[1] but also because they failed to present the question of "due process" to the trial court and, thus, waived their right to have this issue reviewed on appeal. *See Turpin v. King*, 693 S.W.2d 895, 896 (Mo. App. S.D. 1985) (arguments not raised in trial court "are not preserved for our review" and "are waived"). Even if this issue had been properly presented and preserved for review, it is thoroughly established that political subdivisions of a state may not challenge the validity of a state

[1] The Petition did include assertions that parts of SAPA are "vague and indefinite" (Pet. ¶¶ 15, 19), but these averments did not sufficiently identify the specific constitutional basis for such a claim.

statute under the Fourteenth Amendment. *City of Trenton v. State of New Jersey*, 262 U.S. 182, 187 (1923); *City of Harriman v. Bell*, 590 F.3d 1176 (10th Cir. 2010); *U.S. v. Alabama*, 791 F.2d 1450 (11th Cir. 1986); *South Macomb Disposal Auth. v. Township of Washington*, 790 F.2d 500 (6th Cir. 1986); *Town of Ball v. Rapides Parish Police Jury*, 746 F.2d 1049 (5th Cir. 1984); *Village of Arlington Heights v. Regional Transp. Auth.*, 653 F.2d 1149 (7th Cir. 1981); *City of South Lake Tahoe v. California Tahoe Regional Planning Agency*, 625 F.2d 231 (9th Cir. 1980); *City of New York v. Richardson*, 473 F.2d 923 (2nd Cir. 1973). Missouri courts have echoed a similar principle, even in connection with charter cities. *See Crofton v. City of Kansas City*, 660 S.W.2d 709, 716 (Mo. App. W.D. 1983) (as creatures of state, even charter cities have only so much authority as the state chooses to give them).

Where a plaintiff *has* clearly identified a specific constitutional provision, however, Missouri law still requires them to allege sufficient facts to support their claim of a constitutional violation. "Merely asserting that some provision of the constitution has been violated, without alleging any supporting facts, is the assertion of a legal conclusion and does not constitute a satisfactory statement of facts." *State ex rel. Chicago, R.I. & P.R. Co. v. Public Service Commission*, 429 S.W.2d 723, 726 (Mo. 1968). As a result, for several of its constitutional claims – and specifically, its claims that "HB 85" violates the Supremacy Clause of the U.S. Constitution – the Petition failed to comply with

Rule 55.05, which requires a plaintiff to set forth specific facts showing how the allegedly unconstitutional statute produces the constitutional violation the plaintiff has claimed. *See Missouri Municipal League v. State*, 489 S.W.3d 765, 768 (Mo. banc 2016) (holding that petition failed to state facts sufficient to conclude that statute violated Art. III, § 40(28) of the Missouri Constitution).

Due to the dearth of specific factual allegations in the Municipalities' Petition, the parties are forced to advance and defend arguments based entirely on hypotheticals and conjecture, totally disconnected from any concrete, real-world controversy that currently exists between the parties. Any ruling based on these arguments would necessarily be advisory in nature, and the Missouri Supreme Court is not authorized to issue advisory opinions. *See, e.g., Cope v. Parson*, 570 S.W.3d 579, 586 (Mo. banc 2019). "An opinion is advisory if there is no justiciable controversy, such as if the question affects the rights of persons who are not parties in the case, the issue is not essential to the determination of the case, or the decision is based on hypothetical facts." *Id*. Because the Municipalities' Petition failed to state the constitutional claims they wish to pursue and further failed to identify concrete, non-hypothetical facts that demonstrate a present, ripe controversy between the parties as to those constitutional claims, this Court should affirm the trial court's judgement.

II. SAPA does not violate the Supremacy Clause.

As noted above, the Municipalities' Petition offers precious little in the way of facts or argument to explain how the circumstances of this case suggest that any particular part of SAPA conflicts with the Supremacy Clause of the U.S. Constitution. Nevertheless, since the federal government's *amicus* brief devotes fourteen pages to advancing this argument that the Appellants' Petition did not properly present, *amici* will rebut it.

As an initial matter, SAPA has five "operative" provisions – sections that specifically define and limit the scope of what certain entities may lawfully do while also providing a mechanism through which citizens may hold accountable those who transgress those limits.

First, § 1.420, RSMo., identifies types of federal laws that, in the estimation of the General Assembly should not be enforced because the federal government lacks the proper authority to impose them. However, the General Assembly makes no pretense of trying to prevent federal authorities from enforcing these laws; SAPA provides no mechanism that would immunize citizens from investigation or arrest by federal officers, or otherwise allow them to interfere with federal officers enforcing these laws. Instead, as is expressly authorized by U.S. Supreme Court precedent (and Article I, § 3 of the Missouri Constitution), with § 1.450, RSMo., the General Assembly has forbidden state

and local officials to enforce the types of federal laws described in § 1.420, RSMo., unless they fit within the exceptions enumerated in § 1.480, RSMo.

Second, § 1.450, RSMo., states that "public officer[s] or employee[s] of the state or any political subdivision of the state" lack authority to enforce any of the types of federal firearm regulations identified in § 1.420, RSMo. Although this section includes the phrase "[n]o entity or person," the only penalties SAPA provides for apply against political subdivisions and law enforcement agencies whose employees have violated the section.

Third, § 1.460, RSMo., establishes the legal consequences for political subdivisions or law enforcement agencies whose employees knowingly violate § 1.450, authorizing persons injured by such a violation to sue the entity that employs an alleged transgressor and establishes a civil penalty owed to a successful plaintiff.

Fourth, § 1.470, RSMo., establishes the legal consequences for political subdivisions or law enforcement agencies that knowingly employ someone who, acting as an official, agent, employee, or deputy of the federal government, enforced or provided material aid and support to others who were attempting to enforce the types of laws described in § 1.420, RSMo.

And fifth, § 1.480, RSMo., defines certain terms and clarifies circumstances under which public officers or employees of the state are authorized to provide material aid for those enforcing federal firearm laws.

The remaining parts of SAPA merely express the sentiments of the legislature. Section 1.410, RSMo., articulates the General Assembly's understanding of the principles of federalism insofar as they relate to the regulation of firearms. Section 1.420, RSMo., identifies the types of firearms regulations that, in the General Assembly's opinion, exceed proper constitutional limits on the federal government's power. Section 1.430, RSMo., declares that the state of Missouri declines to recognize or enforce the types of federal firearm regulations identified in § 1.420, RSMo. Section 1.440, RSMo., contains an aspirational statement about duties of courts and law enforcement agencies, but also carries no consequence for non-compliance.

The only parts of SAPA that have a non-speculative legal effect are those that impose real-world consequences for disobedience. That is not to say that the General Assembly's statements of its sentiments in §§ 1.410, 1.430, and 1.440, RSMo., are *unimportant* – to the contrary, these provisions provide important context for understanding and implementing the operative provisions of the law. But this Court has long recognized the difference between a legal provision that is actually enforceable and one that is "purely aspirational in nature." *See. Pearson v. Koster*, 359 S.W.3d 35, 42 (Mo. banc 2012); *Committee for Educational Equality v. State*, 294 S.W.3d 477, 488-89 (Mo. banc 2009).

The Supremacy Clause ensures that when Congress engages in a proper exercise of the authority the people granted it via the U.S. Constitution, the federal laws thus created will supersede any state laws or state constitutional provisions that conflict with federal law. U.S. Const. art. VI, cl. 2. The Supremacy Clause does *not*, however, require state legislatures to concede that the enactment of any particular law or regulation was a proper exercise of the federal government's constitutional authority, nor does the Supremacy Clause require state or local governments to assist in the enforcement of federal laws, so long as they do not actively prevent federal entities (or state courts) from enforcing federal laws. *See, e.g., M'Cullough v. Maryland*, 17 U.S. (Wheat.) 316, 322 (1819) ("[S]tates have no power … to retard, impede, burden, or in any manner control the operations of the constitutional laws enacted by [C]ongress to carry into effect the powers vested in the national government."), *but see also Printz v. U.S.*, 521 U.S. 898, 935 (1997) ("The Federal Government may neither issue directives requiring the States to address particular problems, nor command the States' officers, or those of their political subdivisions, to administer or enforce a federal regulatory program.") Thus, there is no violation of the Supremacy Clause if a state legislature merely declares its opinion that the federal government has acted in excess of its constitutional powers, or forbids state and local officials or employees from assisting in the enforcement of those laws.

A. SAPA does not "nullify" any federal law.

The Municipalities' initial brief attempts to conjure the ghost of John C. Calhoun, claiming that SAPA somehow "nullifies" federal law. This argument is both disingenuous and erroneous, given that *nowhere* in the Municipalities' Petition do the Appellants argue that any part of SAPA prevents any federal officer or agency from enforcing federal firearm laws. In fact, as even Appellants are forced to acknowledge, the parts of SAPA that the Municipalities call "nullification" merely "declare that Missouri will refuse to follow federal gun laws." Pet. at 3. This is a policy decision that states are absolutely permitted to make.[2] *See Printz* at 935.

A proper understanding of SAPA also undercuts the Municipal Subdivisions' argument that SAPA seeks to "nullify" federal law. Historically, a "nullification" effort identified a specific federal enactment and then attempted to prohibit the enforcement of that federal law by directly and actively preventing federal officers from implementing the targeted law. *Compare* "An Ordinance to Nullify certain Acts of the Congress of the United States, Purporting to be Laws, laying Duties and Imposts on the Importation

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[2] To be clear, the General Assembly may only speak for and set policy for those state and local officials exercising legislative and executive powers. When called upon to do so in cases over which they have jurisdiction, state courts will always be required to interpret and apply federal laws without regard to any opinions the state legislature has expressed in relation to those federal laws.

of Foreign Commodities," 1 Statutes at Large of South Carolina ("Nullification Ordinance") 329-30 *and* Kan. St. § 50-1207 (2013); *with* "An Act to protect the Rights and Liberties of the People of the Commonwealth of Massachusetts," Mass. Gen. Laws Chapter 489, § 1 (1855). South Carolina's infamous nullification ordinance attempted to forbid the courts in that state from even hearing any case that might question the authority of the nullification ordinance or any state laws passed in order to effectuate the ordinance. Nullification Ordinance at 330. It also tried to forbid any party from attempting to take an appeal in such a case to the U.S. Supreme Court, and it directly instructed the state's courts to "proceed to effectuate and enforce their judgments… without reference to such attempted appeal" and to hold persons attempting such an appeal in contempt of court. *Id*. The nullification ordinance required all public officers in that state either to swear to uphold the ordinance or be stripped of their office. *Id.* The courts were forbidden to empanel jurors unless they specifically swore to "well and truly obey, execute, and enforce" the nullification ordinance. *Id.* at 330-31.

Although far less dramatic than South Carolina's Nullification Ordinance, the "Second Amendment Protection Act" Kansas passed in 2013 also attempted actual nullification of federal law, purporting to make it a felony for "any official, agent or employee of the government of the United States… to enforce or attempt to enforce any act, treaty, order, rule or

regulation of the government of the United States regarding a firearm, firearm accessory, or ammunition that is manufactured commercially or privately and owned in the state of Kansas and that remains in the borders of the state of Kansas." Kan. Stat. § 50-1207.

SAPA, on the other hand, was designed merely to prevent state and local officials from assisting in the enforcement of federal laws that the General Assembly considers to infringe upon constitutional protections for the right to keep and bear arms. Unlike South Carolina's Nullification Ordinance, SAPA does not in any way attempt to prevent federal officers from enforcing federal laws within this state's borders. Consequently, SAPA is much more analogous to Massachusetts's Personal Liberty Act of 1855, which was adopted in an effort to limit the impact of the federal Fugitive Slave Acts of 1793 and 1850. Although the state recognized that, due to the terms of these federal statutes, it could not directly prevent slave owners from attempting to remove alleged fugitive slaves from the commonwealth's borders, the Personal Liberty Act authorized courts to impose fines and imprisonment as a penalty for any person *other* than a slave's purported owner who had removed an alleged fugitive slave from the borders of the commonwealth. *See* Massachusetts Gen. Laws Chap. 489, §§ 7, 8 (1855). The Massachusetts Act also allowed private citizens to file suit for damages against any such persons. *Id*. Further, the Personal Liberty Act forbade any state or local officials to take actions to

enforce the federal Fugitive Slave Acts of 1793 and 1850; any person violating the law's restrictions would make themselves subject to removal from office and some would "be forever thereafter ineligible to any office of trust, honor, or emolument, under the laws of this Commonwealth." Massachusetts Gen. Laws Chap. 489, §§ 9-16 (1855). Similarly, attorneys who represented those attempting to claim fugitive slaves would be "deemed to have resigned any commission from the Commonwealth" and would "be thereafter incapacitated from appearing as counsel or attorney" in the Commonwealth's courts. Massachusetts Gen. Laws Chap. 489, § 11 (1855). In sum, although the Personal Liberty Act did not purport to prevent federal officers or slave owners from enforcing the federal Fugitive Slave Acts, it did prohibit state and local officials from assisting in the enforcement of those federal acts. Thus, Massachusetts's historical response to federal laws opposed by the people of a state is a far better analogy to SAPA than South Carolina's Nullification Ordinance; the Municipalities' efforts to haunt SAPA with the specter of "nullification" should be disregarded.

B. Section 1.410, RSMo., does not prevent any federal officer or agency from enforcing federal firearm laws.

SAPA begins with a statement of general constitutional principles that undergird our federal system of government. § 1.410, RSMo. As noted by the federal government's "statement of interest" below, this statement of the

principles of federalism has no independent legal effect. Statement of Interest of the United States, pp. 8-9 (stating § 1.410 has no "independent substantive effect"). Rather, it is offered to explain to the people why the General Assembly deemed it necessary to adopt the Act. Although both the Municipalities and the federal government argue that the principles announced by the legislature echo John C. Calhoun, this suggestion is historically illiterate. In truth, the principles of federalism expressed in § 1.410 are drawn almost entirely – and in many instances *word-for-word* – from James Madison, Thomas Jefferson, and Alexander Hamilton, and they have been echoed in two centuries of U.S. Supreme Court cases.

Section 1.410.2(1) states:

> The general assembly of the State of Missouri is firmly resolved to support and defend the Constitution of the United States against every aggression, whether foreign or domestic, and is duty bound to oppose every infraction of those principles that constitute the basis of the union of the states because only a faithful observance of those principles can secure the union's existence and the public happiness.

This is simply a paraphrase of parts of the first two paragraphs of the Virginia Resolutions of 1798, authored by James Madison. *See* 4 Jonathan Elliot, *The Debates in the Several State Conventions on the Adoption of the Federal Constitution* 528 (1836) ("[T]he General Assembly of Virginia doth unequivocally express a firm resolution to maintain and defend the constitution of the United States, and the Constitution of this state, against

every aggression, either foreign or domestic, …it is their duty, to watch over and oppose every infraction of those principles, which constitute the only basis of that union, because a faithful observance of them, can alone secure its existence, and the public happiness.")

Section 1.410.2(2) states:

> Acting through the Constitution of the United States, the people of the several states created the federal government to be their agent in the exercise of a few defined powers, while reserving for the state governments the power to legislate on matters concerning the lives, liberties, and properties of citizens in the ordinary course of affairs. [H.B. 85 & 310, 101st Gen. Assemb., 1st Reg. Sess. (Mo. 2021)].

This is simply a paraphrase of the first sentence of the penultimate paragraph of James Madison's Federalist 45 ("The powers reserved to the several States will extend to all the objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the State. …If the new Constitution be examined with accuracy and candor, it will be found that the change which it proposes consists much less in the addition of NEW POWERS to the Union, than in the invigoration of its ORIGINAL POWERS. …The proposed change does not enlarge these powers; it only substitutes a more effectual mode of administering them."). *See Garcia v. San Antonio Metropolitan Transit Auth.*, 469 U.S. 528, 568-72 (1985) (Powell, J., dissenting) (examining exchanges of

ideas concerning division of powers among federal and state governments during debates about ratification of U.S. Constitution).

Section 1.410.2(3) states:

> The limitation of the federal government's power is affirmed under Amendment X of the Constitution of the United States, which defines the total scope of federal powers as being those that have been delegated by the people of the several states to the federal government and all powers not delegated to the federal government in the Constitution of the United States are reserved to the states respectively or the people themselves.[H.B. 85 & 310, 101st Gen. Assemb., 1st Reg. Sess. (Mo. 2021).]

This is simply a paraphrase of the Tenth Amendment to the U.S. Constitution ("The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people").

Section 1.410.2(4) states:

> If the federal government assumes powers that the people did not grant it in the Constitution of the United States, its acts are unauthoritative, void, and of no force.[H.B. 85 & 310, 101st Gen. Assemb., 1st Reg. Sess. (Mo. 2021).]

This is simply a paraphrase of part of the first paragraph of Thomas Jefferson's Kentucky Resolutions of 1798 ("whensoever the general government assumes undelegated powers, its acts are unauthoritative, void and of no force"), which also echoed Alexander Hamilton's observation in Federalist 78 that "no position… depends on clearer principles than that every act of a delegated authority, contrary to the tenor of the commission under

which it is exercised, is void." *See Lawson v. Kelly*, 58 F.Supp.3d 923, 935 (W.D. Mo. 2014).

The first three sentences of § 1.410.2(5) state:

> The several states of the United States respect the proper role of the federal government but reject the proposition that such respect requires unlimited submission. If the federal government, created by a compact among the states, were the exclusive or final judge of the extent of the powers granted to it by the states through the Constitution of the United States, the federal government's discretion, and not the Constitution of the United States, would necessarily become the measure of those powers. [H.B. 85 & 310, 101st Gen. Assemb., 1st Reg. Sess. (Mo. 2021).]

These sentences are simply a paraphrase of the remaining parts of the first paragraph of Thomas Jefferson's Kentucky Resolutions of 1798. *See* 4 Jonathan Elliot, *The Debates in the Several State Conventions on the Adoption of the Federal Constitution* 540 (1836); *see also EEOC v. Wyoming*, 460 U.S. 226, 268-75 (1983) (Rehnquist, C.J., dissenting) (discussing central importance of federalism in constitutional system and providing historical examples of states' expressed objections to federal acts).

Interestingly enough, then, the language that the Municipal Subdivisions and the DOJ label as "nullification" is merely the General Assembly's reiteration of some of the most deeply ingrained, least-controversial aspects of our constitutional system of government. These statements do assert the sense of the General Assembly that the U.S. Constitution does not delegate to the federal government the authority to

regulate firearms in the manner that SAPA notes, but – again, as the DOJ acknowledged[3] – none of these statements has any independent legal effect, and thus cannot create a cause of action for the Municipalities, or provide any other theory by which Missouri might be seen to interfere with federal officers' efforts to enforce federal laws.

C. Section 1.460, RSMo., does not prevent any federal officer or agency from enforcing federal firearm laws.

Section 1.460, RSMo., is the first of two parts of SAPA that allows for the law's enforcement. It authorizes "any person injured under this section" to file a lawsuit to enjoin a political subdivision or law enforcement agency from employing a law enforcement officer who knowingly violates the provisions of § 1.450, RSMo., or otherwise knowingly deprives a citizen of rights or privileges ensured by the Second Amendment or Article I, § 23 of the Missouri Constitution. A citizen plaintiff in such a case may recover reasonable attorney's fees and costs, as well as a $50,000 civil penalty. This is a policy choice the General Assembly is permitted to make, as long as these penalties only apply to political subdivisions of the state and their law enforcement agencies. Nothing about this provision suggests that it may be used to prevent or otherwise punish a person employed by the federal government for

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[3] Statement of Interest of the United States, pp. 8-9. (stating § 1.410 has no "independent substantive effect")

attempting to enforce federal firearm laws. Absent any concrete facts indicating that a citizen has attempted to sue a federal law enforcement agency under this provision, any ruling this Court might offer as to that possibility would be purely hypothetical and advisory. Thus, there is no basis upon which this Court could conclude that § 1.460, RSMo., violates the Supremacy Clause.

D. Section 1.470, RSMo., does not prevent any federal officer or agency from enforcing federal firearm laws.

Section 1.470, RSMo., is the second part of SAPA that allows for the law's enforcement. It authorizes "any person residing or doing business in a jurisdiction" to file a lawsuit to enjoin a political subdivision or law enforcement agency from employing an individual formerly or currently engaged in efforts to enforce the types of federal firearm laws identified in § 1.420, or to give material aid or support to others who enforce or attempt to enforce those laws. A citizen plaintiff in such a case may recover reasonable attorney's fees and costs, as well as a $50,000 civil penalty per individual so employed. This is a policy choice the General Assembly is permitted to make, as long as these penalties only apply to political subdivisions of the state and their law enforcement agencies – and under this section those penalties do not flow against the individual whose employment gave rise to the liability. Although political subdivisions of the state or law enforcement agencies might choose no longer to employ those individuals, the law itself does not prevent

those individuals from enforcing federal firearm laws. Thus, there is no basis upon which this Court could conclude that § 1.470, RSMo., violates the Supremacy Clause.

III. SAPA does not violate Article VI of the Missouri Constitution.

Although charter municipalities may possess powers more extensive than non-charter municipalities, this Court has made clear that they are still subject to limitations imposed by state statue:

> A county or a city, charter or otherwise, is... a government within a government. The people of a county or city, as such, are not sovereign. A non-charter county or city has the powers conferred on it by the Constitution and statutes of the state. A charter does not transform a county or city into a government apart from and superior to the state. Provisions of a county or city charter which substitute for state legislation with respect to that particular county or city must conform to the Constitution and laws of the state in matters of general interest and statewide concern and are subject thereto. [*Padberg v. Roos*, 404 S.W.2d 161, 171 (Mo. Banc 1966).]

The Municipalities claim that various provisions of Article VI of the Missouri Constitution prevent the State from making laws that would set limits on who the Municipalities can hire as police officers and the actions those police officers are allowed to pursue. App. Br. pp. 34. They do not cite any caselaw in support of these claims, and *amici* are not aware of any. But if this Court were to accept the Municipalities' entirely novel reading of Article VI, it would also have to invalidate at least two entire Chapters of Missouri's

statutes.

The state took control of the St. Louis Metropolitan Police Department just before the onset of the Civil War in 1861, establishing a board of police commissioners primarily comprised of gubernatorial appointees to oversee the administration of that force. State control over the St. Louis City police continued until September 1, 2013, when the city regained local control in the wake of a statewide initiative. *City of St. Louis Regains Control of Metropolitan Police Department*, Statement by St. Louis City Department of Public Safety, September 1, 2013, available online at: https://www.stlouis-mo.gov/news-media/newsgram/city-regains-control-of-metropolitan-police-dept.cfm.
Similarly, the state has maintained control over the Kansas City Police Department almost continuously since its creation in 1874, the only exception being a seven-year span between 1932 and 1939. *About-History*, KANSAS CITY POLICE DEPARTMENT, available online at: https://www.kcpd.org/about/history/. Although over the past century and a half many residents of these cities have expressed their preference for local control, it does not appear that anyone has ever seriously contended that the state's control over these local police forces was an affront to Article VI of the Missouri Constitution.

In addition to the state having control over the general administration of the police departments in these cities, Chapter 84 of the Missouri Statutes is entirely devoted to scores of provisions imposing detailed regulations on the

police departments in St. Louis City and Kansas City. This includes sections providing for the compensation of certain employees, §§ 84.040, 84.060, 84.160, 84.480, 84.510, 84.520, RSMo., defining the hours of regular service, § 84.110, RSMo., defining and limiting who the departments may employ for certain purposes, §§ 84.120, 84.570, RSMo., and includes the specification that the police are tasked with enforcing city laws or ordinances "not inconsistent with… any other law of the state." § 84.090, RSMo. Importantly, this chapter specifies that these police officers are not only officers of the cities in which they work, they are also officers of the State. §§ 84.330, 84.710, RSMo.

Furthermore, for more than twenty years, the State has imposed restrictions on whom municipalities throughout the state could employ as police officers. Chapter 590, RSMo., establishes certain minimum qualifications that a person must meet to be licensed as a "peace officer," and it forbids political subdivisions to employ persons as police officers unless they hold such a license. § 590.020, RSMo. These restrictions are also backed by criminal penalties for individuals - it is a class B misdemeanor for any person to grant or continue the commission of one who does not hold a "peace officer license" - as well as financial penalties for law enforcement agencies that unlawfully employ unlicensed officers. § 590.195, RSMo.

In sum, the Municipalities' claim that SAPA violates various provisions of Article VI of the Missouri Constitution because it limits the authority of law

enforcement officers and makes public subdivisions and law enforcement agencies accountable for the knowing actions of their employees lacks any precedent and it contradicts more than 160 years of this state's historical experience. This Court should conclude that nothing in Article VI of the Missouri Constitution prohibits the General Assembly from limiting the authority of local law enforcement officials and the circumstances under which they may be employed by state or local law enforcement agencies, or from creating a cause of action for citizens to use for the purpose of enforcing these limitations.

CONCLUSION

The people of this state, acting through their General Assembly, have determined that those employed by state and local law enforcement officials and agencies should have only the authority to assist in the enforcement of federal firearm laws under specified, limited circumstances. This is a decision that Article I, § 3 of the Missouri Constitution expressly allows the people of this state to make. Moreover, the Municipalities' Petition did not adequately state or demonstrate the constitutional violations they argued in their initial brief. As a result, this Court should affirm the Circuit Court's judgment granting the State's motion for judgment on the pleadings.

Respectfully submitted,

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RULE 84.06(c) CERTIFICATION AND CERTIFICATE OF SERVICE

I hereby certify that this brief complies with the type-volume limitation of Rule 84.06(b) of the Missouri Rules of Civil Procedure. This brief was prepared in Microsoft Word 365 and contains no more than 6,133 words, excluding those portions of the brief listed in Rule 84.06(b) of the Missouri Rules of Civil Procedure (less than the 27,900 word limit in the rules). The font is Century Schoolbook, double-spacing, 13-point type.

I hereby certify that I electronically filed the foregoing with the Clerk of the Missouri Supreme Court using the Electronic Filing System, and that a copy will be served by the Electronic Filing System upon those parties indicated by the Electronic Filing System.

Respectfully submitted,

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David E. Roland