

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MISSOURI  
CENTRAL DIVISION**

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 2:22-cv-4022-BCW
	)	
THE STATE OF MISSOURI <i>et al.</i> ,	)	
	)	
Defendants.	)	

**BRIEF OF AMICUS CURIAE  
GIFFORDS LAW CENTER TO PREVENT GUN VIOLENCE IN  
SUPPORT OF PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT**

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## INTEREST OF AMICUS CURIAE

Amicus curiae Giffords Law Center to Prevent Gun Violence (“Giffords Law Center”) is a non-profit policy organization serving lawmakers, advocates, legal professionals, gun violence survivors, and others who seek to reduce gun violence and improve the safety of their communities.<sup>1</sup> The organization was founded more than a quarter-century ago following a gun massacre at a San Francisco law firm and was renamed Giffords Law Center in 2017 after joining forces with the gun-safety organization led by former Congresswoman Gabrielle Giffords.

Today, through partnerships with gun violence researchers, public health experts, and community organizations, Giffords Law Center researches, drafts, and defends the laws, policies, and programs proven effectively to reduce gun violence. Together with its partner organization, Giffords Law Center also advocates for the interests of gun owners and law enforcement officials who understand that Second Amendment rights have always been consistent with gun safety legislation and community violence prevention strategies.

Giffords Law Center has contributed technical expertise and informed analysis as an amicus in numerous cases involving firearm regulations and constitutional principles affecting gun policy. *E.g.*, Brief Amicus Curiae of Giffords Law Center to Prevent Gun Violence, *N.Y. State Rifle & Pistol Ass’n, Inc. v. Bruen*, No. 20-843 (U.S. Sept. 21, 2021); *McDonald v. City of Chicago*, 561 U.S. 742 (2010); *District of Columbia v. Heller*, 554 U.S. 570 (2008). Several courts have cited research and information from Giffords Law Center’s amicus briefs in Second Amendment rulings. *See, e.g.*, *Ass’n of N.J. Rifle & Pistol Clubs v. Att’y Gen. N.J.*, 910 F.3d 106, 121–22 (3d Cir. 2018); *Stimmel v. Sessions*, 879 F.3d 198, 204, 208, 210 (6th Cir. 2018); *Peruta v. Cnty. of*

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<sup>1</sup> Giffords Law Center’s website, [www.giffords.org/lawcenter](http://www.giffords.org/lawcenter), is the premier clearinghouse for comprehensive information about federal, state, and local firearms laws and Second Amendment litigation nation-wide.

*San Diego*, 824 F.3d 919, 943 (9th Cir. 2016) (*en banc*) (Graber, J., concurring); *Md. Shall Issue v. Hogan*, 353 F. Supp. 3d 400, 403–05 (D. Md. 2018).<sup>2</sup>

## INTRODUCTION

On June 12, 2021, Missouri enacted the “Second Amendment Preservation Act” (“SAPA”), Mo. H.B. 85 (2021) (codified at Mo. Rev. Stat. §§ 1.410 to 1.485). SAPA, like other firearms-related nullification laws around the country, purports to nullify “[a]ll federal acts, laws, executive orders, administrative orders, rules, and regulations \* \* \* that infringe on the people’s right to keep and bear arms,” Mo. Rev. Stat. § 1.430, such as federal laws requiring background checks or surrender of firearms in certain situations. *See id.* § 1.420(1)–(5). SAPA provides a private right of action, *id.* §§ 1.460.1, 1.470.2, incentivizes private enforcement with a one-sided right to attorneys’ fees, *id.* §§ 1.460.2, 1.470.3, and imposes monetary penalties for violations. *Id.* § 1.460.1. It also prohibits the hiring or continued employment of an individual who has violated the Act. *Id.* § 1.470.1.

Giffords Law Center does not seek to burden the Court by rearguing the points made in the United States’ summary judgment memorandum,<sup>3</sup> though it agrees with the persuasive arguments presented there, and emphasizes that SAPA was admittedly adopted in an effort to nullify federal firearm laws. As such, it is blatantly unconstitutional under Article VI, clause 2 of the U.S. Constitution (the Supremacy Clause), as the Supreme Court has made clear over the course of our Nation’s history. *E.g., Cooper v. Aaron*, 358 U.S. 1, 18-19 (1958); *United States v. Reynolds*, 235 U.S. 133, 148-9 (1914); *Anderson v. Carkins*, 135 U.S. 483, 489-90 (1890). *See also M’Culloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 326-30 (1819). In endeavouring to authorize conduct that

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<sup>2</sup> Giffords Law Center filed the last two briefs referenced in the main text, above, under its former name, the Law Center to Prevent Gun Violence.

<sup>3</sup> Giffords Law Center adopts the United States’ Statement of Undisputed Facts.



federal law deems illegal, SAPA is also invalid under foundational principles of preemption. *Arizona v. United States*, 567 U.S. 387, 406 (2012) (“[T]he ordinary principles of preemption include the well-settled proposition that a state law is preempted where it ‘stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress’” (quoting *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941)); *Mont. Shooting Sports Ass’n v. Holder*, 727 F.3d 975, 982-983 (9th Cir. 2013) (“Congress could have rationally concluded that the manufacture of unlicensed firearms, even if initially sold only within the State of Montana, would in the aggregate substantially affect the interstate market for firearms. Under *Raich* [545 U.S. 1 (2005)], and *Stewart* [451 F.3d 1071 (9th Cir. 2006)], that is enough to place the [firearm] within reach of the long arm of federal law. Because the [Montana law] purports to dictate to the contrary . . . it is necessarily preempted and invalid.”), *cert. denied* 571 U.S. 1131 (2014)).<sup>4</sup>

Amicus submits this brief to assist the Court in contextualizing the harm SAPA is causing, and to emphasize the corresponding importance and strength of the United States’ arguments for striking down SAPA, to wit: (1) federal gun safety laws are effective in reducing gun violence, and are compatible with the Second Amendment; (2) SAPA has a deleterious real-world impact on Missourians; (3) concern with SAPA has been expressed across the law enforcement and political spectrum; and (4) this law is part of a broader trend of nullification efforts in the Second Amendment space.

## **ARGUMENT**

### **I. Gun Safety Laws Work and Are Compatible with the Second Amendment**

SAPA’s intended purpose of limiting the applicability of federal gun safety laws flies in the face of the reality that federal gun safety laws are effective in reducing gun violence without

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<sup>4</sup> See also *Arizona v. Inter Tribal Council of Ariz., Inc.*, 570 U.S. 1, 9 (2013) (“If [state law conflicts with federal law], the state law, ‘so far as the conflict extends, ceases to be operative.’”).

offending the Second Amendment's protections. The research on this is clear.<sup>5</sup> Several examples follow.

No Guns in Schools. Federal law protects schools and the children who attend them by ensuring that, in general, guns are not permitted within 1000 feet of any school. *See* 18 U.S.C. §§ 921(a)(25)-(26), 922(q)(2)(A). While the Gun Free Zones Act contains a number of dangerous exceptions, it has succeeded on a number of fronts. Following the law's adoption and reissuance in the early- and mid-1990s, the number of schoolchildren who carried guns dropped by more than one-third.<sup>6</sup> The school-associated homicide rate for students between the early 1990s and mid-2000s dropped by more than half.<sup>7</sup>

Minimum Age to Purchase a Gun. Under federal law, licensed firearm dealers may not sell anyone under 21 a handgun, or anyone under 18 a long gun.<sup>8</sup> This restriction flows directly from the intuitive, and scientifically-confirmed, fact that the parts of our brains responsible for impulse control, judgment, and long-range planning are among the last to fully mature.<sup>9</sup> Among youth

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<sup>5</sup> The state of gun violence in Missouri, and the negative economic implications of such violence, are addressed in the following section of this brief.

<sup>6</sup> Between 1993 and 1999, the percentage of students who carried a gun, regardless of location, decreased from approximately 8% to 5%. This lower percentage did not change significantly over the years 1999–2007. Danice K. Eaton et al., Centers for Disease Control & Prevention, Morbidity & Mortality Surveillance Summaries, 57 (SS04); 1-131, *Youth Risk Behavior Surveillance – United States, 2007* (June 6, 2008), <http://www.cdc.gov/mmwr/preview/mmwrhtml/ss5704a1.htm>.

<sup>7</sup> W. Modzeleski et al., Centers for Disease Control & Prevention, Morbidity & Mortality Weekly Report, 57(02); 33-36, *School-Associated Student Homicides–United States, 1992-2006* (Jan. 18, 2008), <http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5702a1.htm>.

<sup>8</sup> 18 U.S.C. § 922(b)(1), (c)(1). Private sellers are prohibited from transferring handguns to anyone under 18, with certain exceptions. 18 U.S.C. § 921(x)(1), (5).

<sup>9</sup> Elizabeth R. Sowell et al., *In Vivo Evidence for Post-adolescent Brain Maturation in Frontal and Striatal Regions*, 2 Nature Neuroscience 859, (1999); Tulio M. Otero and Lauren A. Barker, *The Frontal Lobes and Executive Functioning*, in HANDBOOK OF EXECUTIVE

and young adults aged 10-24, “suicide is the 3rd leading cause of death,”<sup>10</sup> and firearm access may exacerbate the risk to this age group.<sup>11</sup> Furthermore, young people disproportionately commit gun homicides.<sup>12</sup> Importantly, following the adoption of the federal minimum age law, firearm-related suicide and unintentional deaths fell among young people.<sup>13</sup> More restrictive state-specific age laws also support the efficacy of these policies; in raising the minimum age to purchase any firearm to 21, one study found that those states saw a nine percent decline in firearm suicide rates among 18 to 20 year olds.<sup>14</sup>

Background Checks: Licensed firearms dealers must perform a background check on all prospective gun purchasers to ensure the sale would be lawful.<sup>15</sup> The number of prohibited

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FUNCTIONING 29, 33-35 (Sam Goldstein & Jack A. Naglieri ed., 2014) (explaining that executive function skills are not fully developed until young adulthood).

<sup>10</sup> *Disparities in Suicide*, CENTERS FOR DISEASE CONTROL AND PREVENTION, <https://www.cdc.gov/suicide/facts/disparities-in-suicide.html> (last visited March 12, 2022).

<sup>11</sup> See Johanna Birckmayer and David Hemenway, *Suicide and Firearm Prevalence: are Youth Disproportionately Affected?*, 31 SUICIDE AND LIFE-THREATENING BEHAVIOR 303 (2001); Matthew Miller and David Hemenway, *The Relationship Between Firearms and Suicide: A Review of the Literature*, 4 AGGRESSION AND VIOLENT BEHAVIOR 59 (1999).

<sup>12</sup> For example, in 2020, 18-24-year olds comprised 12% of the US population, *Adult population by age group in the United States*, THE ANNIE E. CASEY FOUNDATION, KIDS COUNT DATA CENTER, <https://datacenter.kidscount.org/>, but accounted for 27% of known firearm homicide offenders, C. Puzanchera et al., *Easy Access to the FBI's Supplementary Homicide Reports: 1980-2020*, NATIONAL CENTER FOR JUVENILE JUSTICE (last visited March 12, 2022), <https://www.ojjdp.gov/ojstatbb/ezashr/>.

<sup>13</sup> Controlling for other factors, unintentional firearm deaths and firearm suicides among youth (ages 0-19) fell after the federal minimum age law was enacted. Mark Gius, *The Impact of Minimum Age and Child Access Prevention Laws on Firearm-related Youth Suicides and Unintentional Deaths*, 52 SOC. SCI. J. 168 (2015).

<sup>14</sup> Daniel W. Webster et al., *Association Between Youth—Focused Firearm Laws and Youth Suicides*, 292 J. AM. MED. ASS'N 594, 598 (2004).

<sup>15</sup> 18 U.S.C. § 922(t)(1).

purchasers prevented from purchasing a firearm is staggering; in 2017 alone, over 180,000 people “were denied because the individual was prohibited from possessing a firearm under federal or state law.”<sup>16</sup> So, too, have gun safety laws repeatedly been found by the courts to be consistent with the Second Amendment to the United States Constitution, following the landmark United States Supreme Court decision in *Heller*, 554 U.S. at 595. There, the Court cautioned that the Second Amendment right is “not unlimited,” and does not confer a “right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.” *Id.* at 626. In addition to defining the scope of the Second Amendment Right, the Court provided a non-exhaustive list of “presumptively lawful” firearms regulations: prohibitions on carrying concealed weapons; possession of firearms by felons and the mentally ill; forbidding guns in “sensitive places” like schools and government buildings; “conditions and qualifications on the commercial sale” of firearms; “banning dangerous and unusual weapons”; and “laws regulating the storage of firearms to prevent accidents.” *Id.* at 626-27 n.26, 632.

Following *Heller*, Giffords Law Center has tracked more than 1,400 Second Amendment challenges to various federal, state, and local gun safety laws and, in the vast majority of these cases, courts have found that the challenged laws rest on firm constitutional grounds and do not violate the Second Amendment.<sup>17</sup>

Thus, the United States’ action is not about limiting the Second Amendment or disarming Missourians. Federal gun safety laws are consistent with the Second Amendment and have

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<sup>16</sup> GOV’T ACCOUNTABILITY OFF., FEW INDIVIDUALS DENIED FIREARMS PURCHASES ARE PROSECUTED AND ATF SHOULD ASSESS USE OF WARNING NOTICES IN LIEU OF PROSECUTIONS 1 (2018), <https://www.gao.gov/assets/gao-18-440.pdf>.

<sup>17</sup> See *Post-Heller Litigation Summary*, GIFFORDS LAW CENTER (last visited March 12, 2022) <https://giffords.org/lawcenter/gun-laws/litigation/post-heller-litigation-summary/>, and cases discussed therein.

repeatedly withstood challenges on that basis. Each of the federal regulations described above, or a more restrictive state corollary, has been upheld against constitutional challenge. *See Nat'l Rifle Ass'n of Am., Inc. v. Bureau of Alcohol, Tobacco, Firearms, & Explosives*, 700 F.3d 185, 211 (5th Cir. 2012) (upholding the federal minimum age law); *United States v. Dorsey*, 418 F.3d 1038, 1045-46 (9th Cir. 2005) (upholding the Gun Free School Zones Act), *partially abrogated on other grounds by Ariz. v. Gant*, 556 U.S. 332, 342-344 n.3 (2009); *United States v. Danks*, 221 F.3d 1037, 1038-39 (8th Cir. 1999) (same); *Colo. Outfitters Ass'n v. Hickenlooper*, 24 F. Supp. 3d 1050, 1073-74 (D. Colo. 2014) (upholding a Colorado law that required background checks for private firearm transfers), *vacated on other grounds*, 823 F.3d 537 (10th Cir. 2016).

The appropriate way to determine the constitutionality of a federal law is through a challenge before a court. Only the judiciary may strike down laws as unconstitutional. *See, e.g., Marbury v. Madison*, 5 U.S. 137, 1 Cranch 137, 177, 2 L.Ed. 60 (1803) (“[I]t is emphatically the province and duty of the judicial department to say what the law is.”). Similarly, this is not a commandeering issue. The State of Missouri’s action in purporting to negate federal law is not simply a matter of refusing to put resources towards enforcing that law.

## **II. SAPA Has a Deleterious Real World Impact on Missourians**

Gun violence poses a serious public safety risk to residents of Missouri. On average, over the past five years, 1,027 Missourians have been killed due to gun violence.<sup>18</sup> In 2020, Missouri had the fourth highest gun death rate among the states.<sup>19</sup> In recent years, Missouri has experienced

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<sup>18</sup> *Firearm Mortality by State*, CENTERS FOR DISEASE CONTROL AND PREVENTION, [https://www.cdc.gov/nchs/pressroom/sosmap/firearm\\_mortality/firearm.htm](https://www.cdc.gov/nchs/pressroom/sosmap/firearm_mortality/firearm.htm) (last visited March 14, 2022).

<sup>19</sup> *Id.*

an annual average of 339 gun-related homicides, 562 gun-related suicides,<sup>20</sup> and 996 non-fatal gun assaults.<sup>21</sup>

- Gun violence is the leading cause of death for Missouri children ages 1-17. From 2016 to 2020, 1,425 people under the age of 25 were killed with a gun in Missouri. Exposure to gun violence can cause lasting trauma in young people, leading to PTSD, chronic stress, and decreased future earnings.
- The presence of guns makes domestic violence far more deadly. Nearly 74% of Missouri's intimate partner homicides involve a gun. From 2016 to 2020, 142 women were killed with a gun by their intimate partner in Missouri.
- Black men make up 6% of Missouri's population, but account for nearly 61% of the state's gun homicide victims. Black men ages 18-24 are more than 30 times more likely than white men the same age to be murdered with a gun.
- 54% of gun deaths in Missouri are suicides; 60% of Missouri suicide deaths involved firearms. From 2016 to 2020, 3,500 people in Missouri died from firearm suicide.<sup>22</sup>

Often overlooked in the discussion of firearms laws is the overwhelming financial cost attributable to gun violence. Missourians suffer the fourth-highest per-capita gun violence cost in the nation.<sup>23</sup> And a significant portion of gun violence's economic toll – \$384 million annually –

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<sup>20</sup> *WISQARS*, CENTERS FOR DISEASE CONTROL AND PREVENTION, <https://wisqars.cdc.gov/data/explore-data/home> (last visited March 12, 2022).

<sup>21</sup> *MOPHIMS*, MISSOURI DEPARTMENT OF HEALTH & SENIOR SERVICES, <https://healthapps.dhss.mo.gov/MoPhims/MOPHIMSHome>.

<sup>22</sup> *CDC Wonder: Underlying Cause of Death, 1999-2020*, CENTERS FOR DISEASE CONTROL AND PREVENTION, <https://wonder.cdc.gov/controller/datarequest/D76> (last visited March 12, 2022).

<sup>23</sup> *Report: The Economic Cost of Gun Violence*, EVERYTOWN FOR GUN SAFETY, <https://everytownresearch.org/report/the-economic-cost-of-gun-violence/#costs-by-state> (2021).

is paid by taxpayers; in addition to the cost of law enforcement, up to 85% of gunshot victims in Missouri are uninsured or covered by government-funded insurance.<sup>24</sup> All told, the annual directly measurable expenses (as opposed to abstract costs like pain and suffering) of gun violence in Missouri totals \$9.8 billion per year.<sup>25</sup> This is more than the State of Missouri spends on corrections and public safety combined.<sup>26</sup>

Additionally, SAPA exacerbates dangers to domestic violence victims.<sup>27</sup> In an amicus brief filed in the Missouri Supreme Court, MOCADSV noted that SAPA “has chilled...cooperation with federal law enforcement, putting domestic violence survivors at increased risk of becoming victims of armed abusers.”<sup>28</sup>

The statute also contains what is acknowledged by members of both parties as a “domestic violence gun loophole.”<sup>29</sup> Language preventing persons convicted of a domestic violence

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<sup>24</sup> *The Economic Cost of Gun Violence in Missouri*, GIFFORDS LAW CENTER, <https://giffords.org/wp-content/uploads/2019/01/Economic-Cost-of-Gun-Violence-in-Missouri-1.pdf> (2019).

<sup>25</sup> *Report: The Economic Cost of Gun Violence*, EVERYTOWN FOR GUN SAFETY, <https://everytownresearch.org/report/the-economic-cost-of-gun-violence/#costs-by-state> (2021).

<sup>26</sup> *Fiscal Year 2023 Governor’s Recommended Operating Budget (All Funds)*, STATE OF MISSOURI BUDGET EXPLORER, <https://oa.mo.gov/sites/default/files/FY%2023%20Gov%20Rec%20Charts.pdf> (last visited March 12, 2022).

<sup>27</sup> Rebecca Rivas, *Missouri made it impossible for police to prevent convicted domestic abusers from having guns*, NRP (Jan. 19, 2022), <https://www.kcur.org/politics-elections-and-government/2022-01-19/a-bipartisan-group-of-missouri-lawmakers-want-to-fix-the-states-domestic-violence-gun-loophole>.

<sup>28</sup> *Id.* (citing amicus brief in *City of St. Louis, et al. v. State of Missouri, et al.*, Mo. S. Ct. C.N. SC99290).

<sup>29</sup> Kaitlyn Schallhorn, *SAPA could be harmful to domestic violence victims*, MOCADSV warns, THE MISSOURI TIMES (Dec. 27, 2021), <https://themissouritimes.com/sapa-could-be-harmful-to-domestic-violence-victims-mocadsv-warns/>.

misdemeanor, or subject to a protective order, from possessing a weapon was previously triggered through the firearms permitting process. When the State expanded concealed carry rights, doing away with the permitting process, this important protection was effectively destroyed.

By limiting the enforceability of federal firearms laws that are both effective and consistent with Second Amendment jurisprudence – through the imposition of draconian fines on local law enforcement – SAPA has a dangerous effect on Missouri and its citizens that can be measured in lives and dollars.

### **III. Concern with SAPA has been Expressed Across the Law Enforcement and Political Spectrum**

The uncertainty baked into SAPA quickly chilled law enforcement efforts in Missouri. According to a November 22, 2021 Kansas City Star report, the Missouri Police Chiefs Association expressed concern that SAPA had “caused confusion and potentially unintended legal implications.”<sup>30</sup> “Some police ha[d] complained the law’s open-ended wording le[ft] them vulnerable to lawsuits for a wide variety of actions that may only tangentially involve federal personnel, or firearms.”<sup>31</sup> In the wake of SAPA’s passage, some Republican lawmakers in the state have been “privately expressing hope that it would be struck down in court.”<sup>32</sup>

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<sup>30</sup> Jeanne Kuang, *Missouri police ask Republican legislators to amend act blocking federal gun safety laws*, KAN. CITY STAR (Nov 22, 2021), <https://www.kansascity.com/news/politics-government/article255973367.html>.

<sup>31</sup> *Id.*; see also, *Kansas City mayor decries new Missouri state gun law*, CBS NEWS (Nov. 5, 2021), <https://www.cbsnews.com/news/kansas-city-mayor-quinton-lucas-missouri-second-amendment-preservation-act-60-minutes-2021-11-05/>; Petition for Declaratory Judgment and Injunction, *City of St. Louis v. State of Missouri*, (No. 21AC-CC00237), <https://www.documentcloud.org/documents/20969781-sapa-petition-062121>.

<sup>32</sup> Glenn Thrush, *Inside Missouri’s ‘2nd Amendment Sanctuary’ Fight*, NEW YORK TIMES (Sept. 9, 2021), <https://www.nytimes.com/2021/09/09/us/politics/missouri-gun-law.html>.



The Police Chiefs Association also expressed concerns about “protecting officers from frivolous civil litigation related to the continued joint endeavors with [their] federal partners.”<sup>33</sup> According to the Star, Missouri’s nullification law “prompted several Missouri agencies to halt common practices that involve working with the federal government.”<sup>34</sup>

The St. Louis Area Police Chiefs Association has also expressed grave reservations to the Missouri Supreme Court about SAPA’s negative impact on law enforcement:

The language contained in SAPA places a continuous and unreasonable burden on our member and the State’s entire law enforcement community to interpret vague language and attempt compliance. Due to the uncertainty caused by the structure and wording of SAPA, ***law enforcement officers throughout Missouri are left with no choice but to avoid any involvement with federal agencies or laws that could have anything to do with firearms***, regardless of whether such involvement would better assist the law enforcement community in protecting the citizens of Missouri, or allow the law enforcement community to comply with other state and federal statutes.

Brief of the St. Louis Area Police Chiefs Association as Amicus Curiae in Support of Plaintiff at 3, *City of Arnold, Missouri v. State of Missouri*, (No. 22JE-cc00010) (emphasis supplied), <https://bloximages.newyork1.vip.townnews.com/stltoday.com/content/tncms/assets/v3/editorial/5/c6/5c6d1f3a-e770-5975-be2d-985c3b70f7fc/61dcae7f8c7fa.pdf.pdf>.

SAPA has also chilled prosecutorial efforts. On June 17, 2021—five days after the legislation passed—the St. Louis Post-Dispatch reported that “[p]rosecutors working for [the] Missouri Attorney General ha[d] withdrawn...from nearly two dozen federal drug, gun and carjacking cases in St. Louis.”<sup>35</sup>

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<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> Robert Patrick and Jack Suntrup, *Missouri Attorney General Schmitt’s prosecutors pulled from federal violent crimes cases*, ST. LOUIS POST-DISPATCH (Jun. 17, 2021),

#### IV. SAPA is Part of a Broader Trend of Nullification Efforts in the Second Amendment Space

Finally, the Court should note the sudden and widespread emergence of legislation seeking to nullify federal gun safety laws. In 2021 alone, at least 20 such laws were enacted across 12 states. For example, the following five laws, like SAPA, not only purport to nullify federal firearms laws but to impose liability for a violation:

- Arkansas Sovereignty Act of 2021, A.C.A. § 21-1-901, et seq. (purporting to nullify federal laws that infringe on the Second Amendment or state corollary, and imposing criminal penalties on elected officials and decertification of law enforcement officers who enforce such federal laws).
- Idaho Firearm and Firearm Accessories and Components Protection Act, Idaho Code §§ 18-3315A to 18-3315B (purporting to nullify federal laws contrary to the state constitutional right to bear arms, and imposing alternative civil and criminal penalties on official, agents and employees who enforce such criminal laws).
- Kansas Second Amendment Protection Act, Kan. Stat. Ann. § 50-1201, et seq. (prohibiting federal officials from enforcing federal firearms laws in certain instances, providing for criminal penalties).
- Tennessee Firearm Protection Act, Tenn. Code Ann. § 38-3-115 (providing that state resources shall not be allocated to the enforcement of federal firearms laws if contrary to state law, and providing that violators are subject to ouster).
- Wyoming Firearms Freedom Act, Wyo. Stat. § 6-8-405 (prohibiting Wyoming public servants, federal officials, and individual firearms dealers from enforcing federal firearms laws in certain instances, and providing criminal penalties for violations by federal officials.)<sup>36</sup>

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[https://www.stltoday.com/news/local/crime-and-courts/missouri-attorney-general-schmitts-prosecutors-pulled-from-federal-violent-crime-cases/article\\_c48b7fa3-cf53-59b9-8db4-b227918db557.html#:~:text=Patrick%20%2C%20Jack%20Suntrup-,ST.,enforcement%20of%20federal%20gun%20rules.](https://www.stltoday.com/news/local/crime-and-courts/missouri-attorney-general-schmitts-prosecutors-pulled-from-federal-violent-crime-cases/article_c48b7fa3-cf53-59b9-8db4-b227918db557.html#:~:text=Patrick%20%2C%20Jack%20Suntrup-,ST.,enforcement%20of%20federal%20gun%20rules.)

<sup>36</sup> See also, e.g., A.R.S. § 1-272 (prohibiting state resources from use to enforce, administer, or cooperate with federal law inconsistent with state firearms laws); Montana Federal Mandates

Courts should reject these attempts to end run the United States Constitution and undercut settled principles of preemption. The remedies sought by the United States here are ripe for issuance. A significant step toward protecting the safety and well-being of Missourians, not to mention the economic interests of the State supported with their tax dollars, can be taken through a grant of the United States' instant motion.

### **CONCLUSION**

Amicus Giffords Law Center supports the United States' motion for summary judgment, and urges the Court to grant all relief requested therein.

Dated: March 14, 2022

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Act, Mont. Code Ann. §§ 2-1-401 to 2-1-409 (establishing procedures for identifying federal mandates and executive orders contrary to state policy or state interpretation of the Constitution); N.D. Cent. Code, § 54-03-32 (establishing procedures for identifying federal executive orders contrary to state interpretation of the Constitution); 74 Okla. St. § 18b(24) (providing the Attorney General's duty to evaluate federal executive orders); Tex. Penal Code § 1.10 (prohibiting state agencies and officials for assisting federal agencies and officials in enforcing federal firearms laws); W. Va. Code §§ 61-7B-2 to 61-7B-10 (prohibiting state law enforcement from enforcing certain federal firearms laws and purporting to limit courts' jurisdiction over enforcement of "red flag laws").

Respectfully submitted,

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