

**IN THE CIRCUIT COURT FOR THE STATE OF TENNESSEE
THIRTIETH JUDICIAL DISTRICT
AT MEMPHIS**

TY TIMMERMANN)
GUN OWNERS OF AMERICA, INC.,)
GUN OWNERS FOUNDATION, and)
TENNESSEE FIREARMS ASSOCIATION,)
)
Plaintiffs,)
)
v.)
)
CITY OF MEMPHIS and)
CERELYN DAVIS, in her Official)
Capacity as the Chief of the Memphis)
Police Department,)
)
Defendants.)
_____)

Civil No.: _____

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

COME NOW Plaintiffs Ty Timmermann, Gun Owners of America, Inc., Gun Owners Foundation, and Tennessee Firearms Association, by and through undersigned counsel, and allege as follows:

I. INTRODUCTION

1. Recognizing the need for uniformity of firearm regulation across the state, in order to effectuate and protect the constitutionally enumerated right to keep and bear arms, the Tennessee General Assembly has preempted the “whole field of the regulation of firearms.” Tenn. Code Ann. § 39-17-1314(a).

2. To that end, state law clearly and expressly prohibits any “county, city, town, municipality, or metropolitan government” from deviating from state law “including, but not limited to, the use, purchase, transfer, taxation, manufacture, ownership, possession, carrying, sale, acquisition, gift,

devise, licensing, registration, storage, and transportation” of “firearms, ammunition, or components of firearms or ammunition, or combinations thereof.” *Id.*

3. In blatant contravention of Tennessee’s preemption law, on July 23, 2024, the Memphis City Council promulgated Ordinance No. 5908 (the “Ordinance”), which proposed for electoral approval three gun control measures: (1) a ban on unlicensed handgun carry, whether on one’s person or within one’s vehicle, and a requirement that firearms stored in an unattended vehicle be locked out of plain view; (2) a ban on the possession and commercial sale of “assault rifles,” an undefined term; and (3) an “extreme risk protection order” or so-called “red flag” law authorizing the issuance of court orders to search and seize firearms from individuals who have committed no crime but nevertheless are deemed to be “dangerous” following an *ex parte* hearing.¹

4. On November 5, 2024, voters within the City of Memphis approved the Ordinance by a more than four-to-one margin.² Accordingly, pursuant to Section 5 of the Ordinance, all three measures “take effect ... on January 1, 2025” because each of the “questions [wa]s approved by a majority of the voters voting thereon in an election to be held on the 5th day of November 2024.”

5. To that end, Plaintiffs respectfully request immediate entry of a Temporary Restraining Order to preserve the status quo and block Defendants’ enforcement of Ordinance No. 5908 in its entirety. Plaintiffs additionally request preliminary followed by permanent injunctive relief, as well as declaratory and other relief (to include the award of fees) to rectify and prevent any further violations of law.

¹ Full Ordinance text available at <https://tinyurl.com/yu64n3sb>. November 5, 2024 ballot text available at <https://tinyurl.com/yc5rezmb>.

² 2024 Memphis Area Election Results, *Com. Appeal*, <https://tinyurl.com/4ppka82j> (Nov. 6, 2024).

II. PARTIES

6. Ty Timmermann is a natural person, a citizen of the United States and of the State of Tennessee, an adult over the age of 21, and a resident of the City of Memphis, residing within City limits. Mr. Timmermann is a member of Plaintiff Gun Owners of America, Inc. and a member of Plaintiff Tennessee Firearms Association (“TFA”). Mr. Timmermann is a law-abiding person who is eligible to possess firearms under federal and Tennessee law. He does not possess a Tennessee Handgun Carry Permit (“HCP”). Rather, Mr. Timmermann carries a lawfully owned handgun for self-defense in public in accordance with Tennessee’s permitless carry law. Mr. Timmermann carries his firearm on a regular basis, on his person and within his vehicle, throughout the City of Memphis. Mr. Timmermann desires to and would continue carrying his firearm in public and in his vehicle throughout the City of Memphis, but for fear of prosecution under the challenged Ordinance, violations of which carry a fine of up to \$50 per infraction and an additional “penalty” of up to \$200.³ Furthermore, Mr. Timmermann owns a number of semiautomatic rifles with features that have been given the pejorative name “assault rifles” in other jurisdictions, such as threaded barrels, flash hiders, pistol grips, telescoping stocks, and the ability to accept detachable magazines. For example, Mr. Timmermann owns an AR-15-pattern rifle which he acquired at a Federal Firearms Licensee (“FFL”) in the City of Memphis. Mr. Timmermann desires to acquire more of these sorts of firearms, including another AR-15-pattern rifle, within the City of Memphis

³ The Ordinance does not establish its own penalties. Thus, Memphis, Tenn. Mun. Code § 1-24-1(A) provides that, “[w]henver in this Code or in any ordinance of the city any act is prohibited or is made or declared to be unlawful or an offense or a misdemeanor, or wherever in such code or ordinance the doing of any act is required or the failure to do any act is declared to be unlawful, and no specific penalty is provided therefor, the violation of any such provision of this Code or any such ordinance shall be punished by a fine of not more than \$50.00 for each separate violation....” In addition, Memphis, Tenn. Mun. Code § 1-24-1(C) provides that “[e]ach code section violation for which a fine has been imposed shall automatically carry a penalty of up to \$200.00....” <https://tinyurl.com/7ywcxuf>.

after the Ordinance's effective date. Mr. Timmermann fears that Defendants will enforce the Ordinance against him if he engages in his desired course of conduct. Mr. Timmermann therefore is "adversely affected" by the challenged Ordinance, being a lawful resident within the United States, a legal possessor of firearms under Tennessee law, and "subject to" the Ordinance by virtue of his physical presence within the boundaries of the City of Memphis for any reason. Tenn. Code Ann. § 39-17-1314(h). *See* Exhibit A, Declaration of Ty Timmermann.

7. Plaintiff Gun Owners of America, Inc. ("GOA") is a California non-stock corporation with its principal place of business in Springfield, Virginia. GOA is organized and operated as a nonprofit membership organization that is exempt from federal income taxes under Section 501(c)(4) of the U.S. Internal Revenue Code. GOA was formed in 1976 to preserve and defend the Second Amendment rights of gun owners. GOA has more than 2 million members and supporters across the country, including across Tennessee and including residents of the City of Memphis besides Mr. Timmermann, many of whom lawfully carry firearms on a daily basis, both concealed and openly, on their persons and within their vehicles, and without a permit to do so. GOA also maintains the Caliber Club, a "partnership program" comprised of more than 5,000 gun stores and shooting ranges across the country. GOA's Caliber Club includes multiple gun stores as members located in Memphis, Tennessee, who sell a wide variety of firearms and accessories, including soon-to-be-banned "assault rifles," which will lead to lost revenue and loss of customer goodwill for GOA's Caliber Club members. Moreover, despite having committed no crime, GOA's members in Memphis are at risk of being deprived their rights to keep and bear arms, without due process, via enforcement of the Ordinance's "extreme risk protection orders." Indeed, without notice or an opportunity to defend themselves in court, all it will take for these members to be deprived of their enumerated rights and subject to a search warrant is *an allegation* of

dangerousness at an *ex parte* hearing. Many of GOA's members, like Mr. Timmermann, will be irreparably harmed by this blatantly unlawful attempt to contravene Tennessee preemption. GOA therefore is "adversely affected" by the challenged Ordinance, being (1) a membership organization that includes two or more individuals who lawfully reside in the United States, legally possess firearms under Tennessee law, and are physically present within the boundaries of the City of Memphis for any reason, in addition to being (2) an organization that "[i]s dedicated in whole or in part to protecting the rights of persons who possess, own, or use firearms for competitive, sporting, defensive, or other lawful purposes." Tenn. Code Ann. § 39-17-1314(h). *See* Exhibit B, Declaration of Erich Pratt.

8. Plaintiff Gun Owners Foundation is a Virginia non-stock corporation with its principal place of business in Springfield, Virginia. GOF was formed in 1983 and is organized and operated as a nonprofit legal defense and educational foundation that is exempt from federal income taxes under Section 501(c)(3) of the U.S. Internal Revenue Code. GOF is supported by gun owners across the country, including residents of the City of Memphis, who fund the organization's activities so that it can, *inter alia*, file litigation such as this to preserve, protect, and defend their right to keep and bear arms. Although not a "traditional" membership organization, courts have found GOF to possess "indicia of membership" under *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333 (1977), for purposes of representing its supporters' interests in litigation. *See, e.g., Texas v. BATFE*, 2024 U.S. Dist. LEXIS 103441, at *17-19 (N.D. Tex. June 11, 2024). GOF's supporters lawfully carry firearms on a daily basis, both concealed and openly, on their persons and within their vehicles, and without a permit to do so. Moreover, despite having committed no crime, GOF's supporters in Memphis are at risk of being deprived their rights to keep and bear arms, without due process, via enforcement of the Ordinance's "extreme risk protection orders."

Indeed, without notice or an opportunity to defend themselves in court, all it will take for these supporters to be deprived of their enumerated rights and subject to a search warrant is *an allegation* of dangerousness at an *ex parte* hearing. Some of GOF's supporters will be irreparably harmed by this blatantly unlawful attempt to contravene Tennessee preemption. GOF therefore is "adversely affected" by the challenged Ordinance, being (1) an organization with indicia of membership that includes two or more individuals who lawfully reside in the United States, legally possess firearms under Tennessee law, and are physically present within the boundaries of the City of Memphis for any reason, in addition to being (2) an organization that "[i]s dedicated in whole or in part to protecting the rights of persons who possess, own, or use firearms for competitive, sporting, defensive, or other lawful purposes." Tenn. Code Ann. § 39-17-1314(h). *See* Exhibit B.

9. Plaintiff Tennessee Firearms Association ("TFA") has its principal place of business in Nashville, Tennessee. It is organized and operated as a nonprofit membership organization under Tennessee law and is exempt from federal income taxes under Section 501(c)(4) of the U.S. Internal Revenue Code. TFA was formed in 1995 to preserve and defend Second Amendment rights of gun owners. TFA has several thousand members and supporters in Tennessee and across the nation, including within the City of Memphis besides Mr. Timmermann, many of whom lawfully carry firearms on a daily basis, both concealed and openly, on their persons and within their vehicles, and without a permit to do so. Moreover, despite having committed no crime, TFA's members in Memphis are at risk of being deprived their rights to keep and bear arms, without due process, via enforcement of the Ordinance's "extreme risk protection orders." Indeed, without notice or an opportunity to defend themselves in court, all it will take for these members to be deprived of their enumerated rights and subject to a search warrant is *an allegation* of dangerousness at an *ex parte* hearing. Many of these gun owners, like Mr. Timmermann, will be

irreparably harmed by this blatantly unlawful attempt to contravene Tennessee preemption. TFA therefore is “adversely affected” by the challenged Ordinance, being (1) a membership organization that includes two or more individuals who lawfully reside in the United States, legally possess firearms under Tennessee law, and are physically present within the boundaries of the City of Memphis for any reason, in addition to being (2) an organization that “[i]s dedicated in whole or in part to protecting the rights of persons who possess, own, or use firearms for competitive, sporting, defensive, or other lawful purposes.” Tenn. Code Ann. § 39-17-1314(h). *See* Exhibit C, Declaration of Richard Archie.

10. Defendant City of Memphis (“City”) is a duly incorporated municipality and political subdivision of the State of Tennessee. The City of Memphis manages, directs, and controls the Memphis Police Department, which has primary responsibility for enforcement of state and local law, including the City’s ordinances. Memphis, Tenn. Charter arts. 11, 42; Tenn. Code Ann. § 38-3-103. The City of Memphis may be served with this Complaint by serving Tannera Gibson, Chief Legal Officer, at 125 North Main Street Room 336, Memphis, TN 38103.

11. Defendant Cerelyn Davis is the Chief of Police of the Memphis Police Department. As its highest-ranking official, Defendant Davis oversees the operations of Defendant MPD and exercises, delegates, or supervises all the powers and duties of the MPD. Memphis, Tenn. Charter art. 11. Defendant Davis is sued in her official capacity and may be served at 170 North Main Street, Memphis, TN 38103.

III. JURISDICTION AND VENUE

12. This Court has subject-matter jurisdiction over this action pursuant to Tenn. Code Ann. §§ 16-10-101 and 16-10-111, Tenn. Code Ann. § 29-14-102, and Tenn. Code Ann. § 1-3-121.

13. Venue lies in this Court pursuant to Tenn. Code Ann. § 20-4-104 because the Individual Plaintiff and certain members and supporters of the Organizational Plaintiffs residing within the City of Memphis are all residents within the 30th Judicial District, and the circumstances giving rise to these claims arose within this judicial district.

IV. STATEMENT OF FACTS

14. In July of 2024, the Memphis City Council approved a referendum purporting to allow voters to decide whether to pass several anti-gun restrictions on the right to keep and bear arms.

15. Although acknowledging that Tennessee law flatly prohibits any such local regulation of firearms, Memphis City Councilman Jeff Warren nevertheless cited his dissatisfaction with the City's crime rate and confessed his desire to 'send a message' to the Tennessee General Assembly: "What we're hoping to see is that the state legislature will look and say, 'One size doesn't fit all with this. Our urban centers have different problems than our rural centers. Let's tailor our laws to help all the citizens[.]'"⁴ In fact, Mr. Warren, one of the sponsors of the Ordinance, openly acknowledged the illegality of the measures. *See* Coleman, *Memphis Gun Control*, *supra* (emphasis added) ("We're hoping by letting the voters speak, our legislators can see what we want and then we can get them to pass laws to allow this *to become legal*[.]"); *see also* Coleman, *Memphis Voters*, *infra* (Mayor Paul Young "admitted ... 'I know how much of a conflict it creates with the state and conflict it has with state law[.] ... And the fact that we can't actually implement the things that are being passed in these referendums.'"). Council Vice-Chairman JB Smiley Jr., who co-sponsored the Ordinance, stated that "[t]he state legislature has been derelict in their [sic] duties" and wanted "the city of Memphis [to voice] their opinion on the type of laws we need here

⁴ Alex Coleman, *Memphis Gun Control Referendum May Draw Fire from State*, WREG Memphis, <https://tinyurl.com/3p9494jn> (July 24, 2024).

that will ultimately govern ourselves.”⁵ And despite knowing that Memphis’ attempts at gun control are preempted, Councilman Chase Carlisle stated that he would “roll the dice.”⁶ In other words, the Memphis City Council knew full well that the Ordinance it was promulgating is unlawful out of the starting gate.

16. State officials immediately decried the City Council’s attempt to flout Tennessee’s firearm preemption. In a joint statement published in August 2024, Tennessee House Speaker Cameron Sexton and Lieutenant Governor Randy McNally warned the City that any attempt to violate Tennessee law would deprive the City of its share of state sales tax revenue.⁷

17. Thereafter, Tennessee Secretary of State Tre Hargett informed the Shelby County Election Commission that he would block any attempt to promulgate a ballot question seeking to violate state preemption law.⁸ Thereafter, the State Election Commission removed the City’s gun control referendum from its November 2024 ballot.⁹

⁵ Katherine Burgess, *Memphis City Council Indicates Support for Public Vote on Gun Control Legislation*, *Com. Appeal*, <https://tinyurl.com/mrymsyay> (May 16, 2023). Last year, when the City Council began discussing the Ordinance measures, Vice-Chairman Smiley opined that “[w]e have a responsibility to each and every person who vote us into office to take action, and whether that action leads to court? I’m almost certain it will.” <https://tinyurl.com/yk8hed8u> **Error! Main Document Only.** at 10:54; *see also id.* at 12:02 (“We control the narrative. They don’t control the narrative. I said once before. We should care less about what Nashville does and we should be more concerned about our obligations to our constituents here in Memphis.”), at 26:15 (“We have to take it a step further. Give the people an opportunity to vote on how they want to be governed and then ... I think this body has more authority than we know. We have one of the best litigators in the state of Tennessee.... And even if we get to the point where we’re outside the purview of state law, in the words of our attorney Wade, tell them to bring it on. We’ll fight about it in court.”).

⁶ James Coleman, *Council’s Move to Curb Gun Violence Sets Up Encounter with State Government*, *Tri-State Def.* (July 13, 2023), <https://tinyurl.com/yck89snm>.

⁷ Raven Moore & Ashley Paul, *Lawmakers Threaten Memphis’ Sales Tax Revenue Due to City’s Gun Control Efforts*, *WREG Memphis*, <https://tinyurl.com/2bur4vrh> (Aug. 27, 2024).

⁸ *Id.*

⁹ Deja Davis & Shay Simon, *Memphis Files Lawsuit Against Election Commission over Gun Referendum*, *WREG Memphis*, <https://tinyurl.com/42h5knj4> (Aug. 30, 2024).

18. Thumbing their collective noses at the General Assembly and the Shelby County Election Commission, the Memphis City Council filed suit against the Commission in August 2024 to compel placement of its gun control referendum back on the ballot.¹⁰ In September 2024, Shelby County Chancellor Melanie Taylor Jefferson reversed the Commission’s removal of the referendum and allowed an Election-Day vote on the gun control measures to occur because “the measures ... had not yet amended the city’s charter and [we]re just proposals” at the time.¹¹

19. On November 5, 2024, Memphis voters approved all three of the referendum’s gun control measures.

20. Contrary to comments made by various City Councilmembers¹² and news media,¹³ the *approved* ballot measures are not merely a plea for help without force of law. Rather, pursuant to Section 5 of the Ordinance, all three measures “take effect ... on January 1, 2025” without further action because each of the “questions [wa]s approved by a majority of the voters voting thereon in an election to be held on the 5th day of November 2024.” Plaintiffs therefore presently have standing to challenge the Ordinance’s restrictions.

21. The first Ordinance measure (Question 1 of 3) amends the City Charter to read:

¹⁰ *Id.*

¹¹ Melissa Moon, *Judge Rules Gun Control Questions Can Go on Memphis Ballot*, WREG Memphis, <https://tinyurl.com/ynd36mb9> (Sept. 12, 2024).

¹² Kim Chaney, *Election 2024: Memphians Approve All Six Referendums on City Ballot*, ABC 24, <https://tinyurl.com/ym7b68b9> (Nov. 6, 2024) (City Council Chairman JB Smiley Jr.: “The citizens have done their part. Now, it is up to each of us, as well as the elected senators and representatives of the Tennessee General Assembly, to stand with the people and pass legislation to keep our neighborhoods safe.”); Alex Coleman, *Memphis Voters Say Yes to 3 Gun Control Measures*, MSN (Nov. 5, 2024), <https://tinyurl.com/4ke74twc> (City Councilman Dr. Jeff Warren: “It’s more trying to ask for assistance....”); Moon, *supra* (City Councilwoman Jerri Green: “It doesn’t actually change the law. It would involve enabling legislation on the city council side and then on the state side[.]”).

¹³ Coleman, *Memphis Voters*, *supra* (“[I]t’s unclear whether the measures will actually result in a local ordinance. The questions were only proposals with no force of law.”).

1. No person shall be allowed to carry a handgun in the City of Memphis without possessing a valid handgun carry permit.
2. No person shall be allowed to carry, store, or travel with a handgun in a vehicle in the City of Memphis without possessing a valid handgun permit.
3. It shall be unlawful for a person to store a firearm, whether loaded or unloaded, or firearm ammunition, in a motor vehicle or boat while the person is not in the motor vehicle or boat unless the firearm or firearm ammunition is kept from ordinary observation and locked within the trunk, utility or glove box, or a locked container securely affixed to the motor vehicle or boat.

22. Question 1¹⁴ violates at least two provisions of Tennessee law. First, by requiring a permit in order to carry a handgun in public, Question 1 conflicts with the permitless carry regime recently established by the Tennessee General Assembly, which expressly decriminalizes and intentionally allows persons to publicly carry handguns *without a permit*. Indeed, Tenn. Code Ann. § 39-17-1307(g) allows a person to “carry[], whether openly or concealed, a handgun” so long as they are “at least twenty-one (21) years of age,” “lawfully possess[] the handgun,” and are “in a place where the person is lawfully present.” This permitless carry regime applies in all counties and jurisdictions in the state, including Shelby County and the City of Memphis.

23. Second, Question 1 falls squarely within Tenn. Code Ann. § 39-17-1314(a), Tennessee’s general firearm preemption statute. The Ordinance purports to prohibit the “*carry*” of a “*handgun*” without a “*permit*.” But Tenn. Code Ann. § 39-17-1314(a) “preempts the whole field of the regulation of *firearms* ... including, but not limited to, the ... *possession, carrying, ... [and] licensing*” of firearms. Question 1 further provides that “[n]o person shall be allowed to ... *store, or travel* with a handgun in a vehicle....” But Tenn. Code Ann. § 39-17-1314(a) preempts all local regulations on the “*storage*[] and *transportation*” of firearms. Question 1 therefore violates Tenn.

¹⁴ Plaintiffs adopt this naming convention for the Ordinance’s three separate measures for ease of reference. However, Plaintiffs reiterate that these “Questions” no longer are mere proposals, but rather approved Ordinance provisions effective January 1, 2025.

Code Ann. § 39-17-1314(a), which clearly states that “[n]o county, city, town, municipality, or metropolitan government nor any local agency, department, or official shall occupy *any part* of the field regulation of firearms....”

24. The second Ordinance measure (Question 2 of 3) amends the City Charter to read:

1. The citizens of Memphis hereby find and declare that the proliferation and use of assault weapons pose a threat to the health, safety, and security of all citizens of Memphis.

2. Hereafter, it shall be unlawful and prohibited for a person to possess or carry, openly or concealed, any assault rifles in the City of Memphis. Persons with valid handgun permits are exempt from this restriction when possessing or carrying an assault rifle on their privately owned property or at a shooting range.

3. Hereafter, the commercial sale of assault rifles within the City of Memphis is unlawful and is hereby prohibited.

4. The provisions of this Chapter shall not apply to the commercial sale of assault rifles to:

4.1 Any federal, state, local law enforcement agency;

4.2 The United States Armed Forces or department or agency of the United States;

4.3 Tennessee National Guard, or a department, agency, or political subdivision of a state;
or

4.4 A Law Enforcement Officer.

5. Pre-existing owners that can demonstrate that the commercial sale of an assault rifle was completed prior to the Effective Date of January 1, 2025, which means that prior to January 1, 2025, the purchaser completed an application, passed a background check, and has a receipt or purchase order for said purchase, without regard to whether the purchaser has actual physical possession of the Assault Rifle, shall be considered a pre-existing purchaser.

25. At the outset, Question 2’s ineptly written language fails to define “assault rifle” and therefore is hopelessly vague, inviting arbitrary and discriminatory enforcement, where what constitutes an “assault rifle” will be in the eye of the beholder.¹⁵ Question 2 likewise fails to explain the relevance of being a “pre-existing purchaser,” providing only a definition for the term,

¹⁵ One Councilmember apparently believes the Ordinance bans “any future sale of *automatic weapons*,” meaning machineguns. Coleman, *Memphis Voters, supra* (emphasis added). But that is not evident from the Ordinance’s text.

and it also fails to identify just what “application” it contemplates, as neither federal nor Tennessee law requires a person to “apply” for approval to purchase an “assault rifle” in the first place.

26. Question 2 also falls squarely within Tenn. Code Ann. § 39-17-1314(a) preemption. Question 2 purports to make it “unlawful and prohibited” for a person to “*possess or carry*, openly or concealed, *any assault rifles*” anywhere, providing a narrow exception for “*permit*” holders to possess and carry when on private property and at ranges. But Tenn. Code Ann. § 39-17-1314(a) “preempts the whole field of the regulation of *firearms* ... including, but not limited to, the ... *possession, carrying*, ... [and] *licensing*” of firearms. Moreover, Question 2 altogether bans the commercial “*sale*” of these firearms within the City. But Tenn. Code Ann. § 39-17-1314(a) preempts all local regulations on the “*sale*” and “*aquisition*” of firearms. Question 2 therefore violates Tenn. Code Ann. § 39-17-1314(a), which clearly states that “[n]o county, city, town, municipality, or metropolitan government nor any local agency, department, or official shall occupy *any part* of the field regulation of firearms....”

27. The third Ordinance measure (Question 3 of 3) amends the City Charter with a verbose ‘red flag’ law. Question 3 authorizes the issuance of *ex parte* court orders prohibiting a person from “*possessing*,” “*using*,” “*purchasing*,” “*manufacturing*,” or otherwise “*receiving*” any “*firearm*.” But Tenn. Code Ann. § 39-17-1314(a) “preempts the whole field of the regulation of *firearms* ... including, but not limited to, the *use, purchase*, ... *manufacture*, ... *possession*, ... [and] *acquisition*” of firearms. Question 3 therefore violates Tenn. Code Ann. § 39-17-1314(a), which clearly states that “[n]o county, city, town, municipality, or metropolitan government nor any local agency, department, or official shall occupy *any part* of the field regulation of firearms....”

28. Moreover, because Question 3 authorizes “a written order or warrant issued by a judge, magistrate, or other judicial officer, with the primary purpose of reducing the risk of firearm-related death or injury” by prohibiting a named individual from possessing firearms and providing for their surrender, this measure is separately preempted under Tenn. Code Ann. § 39-17-1329(b), which “preempts the entire field of legislation regarding extreme risk protection orders to the exclusion of all county, city, town, municipality, or metropolitan government law, ordinances, resolutions, enactments, or regulation.”

29. All told, all three measures contained within the Ordinance are clearly and unambiguously preempted by Tennessee law, and therefore are invalid and void.

COUNT ONE
Ultra Vires Requirement of a Handgun Carry Permit in
Violation of Tenn. Code Ann. § 39-17-1307(g)

30. All foregoing allegations are repeated and realleged as if fully set forth herein.

31. The first Ordinance measure (Question 1 of 3) pertaining to handguns purports to prohibit the carrying of handguns “without possessing a valid handgun carry permit” while in the City of Memphis.

32. Yet Tenn. Code Ann. § 39-17-1307(g) expressly decriminalizes the permitless public carry of handguns statewide by those age 21 or older who are in lawful possession of their handgun and are in a place where they are lawfully present.

33. Pursuant to a settlement agreement and agreed order in *Beeler v. Long*, No. 3:21-cv-00152-KAC-DCP (E.D. Tenn. Mar. 27, 2023), ECF No. 51, the statutory age for permitless carry under Tenn. Code Ann. § 39-17-1307(g) has been lowered from 21 to 18.

34. Accordingly, Mr. Timmermann and the legally eligible members and supporters of Plaintiffs GOA, GOF, and TFA ages 18 and older are free to publicly carry handguns within Memphis, without the need for a permit, pursuant to state law.

35. By nonetheless requiring a permit to lawfully carry a handgun within Memphis, the Ordinance implicitly conflicts with Tennessee's permitless carry regime and therefore violates Tenn. Code Ann. § 39-17-1307(g).

36. Defendants' imminent enforcement of the unlawful Ordinance will cause Plaintiffs irreparable harm.

COUNT TWO
Enactment of Preempted Firearm Regulations in
Violation of Tenn. Code Ann. § 39-17-1314(a)

37. All foregoing allegations are repeated and realleged as if fully set forth herein.

38. The first Ordinance measure (Question 1 of 3) pertaining to handguns, the second Ordinance measure (Question 2 of 3) pertaining to undefined "assault rifles," and the third Ordinance measure (Question 3 of 3) pertaining to "extreme risk protection orders" are all preempted by Tenn. Code Ann. § 39-17-1314(a), which provides that "[n]o county, city, town, municipality, or metropolitan government nor any local agency, department, or official shall occupy any part of the field regulation of firearms...."

39. Defendants' imminent enforcement of the unlawful Ordinance will cause Plaintiffs irreparable harm.

40. Plaintiff GOA's Caliber Club members, which include several gun stores located within the City of Memphis, face unique harms under Question 2 of the Ordinance, which purports to prohibit "assault rifles." As of 2020, firearms pejoratively labeled as "assault" weapons comprise

approximately 20% of all firearms sold.¹⁶ Plaintiff GOA's members therefore face grave uncertainty as to the legal status of large portions of their business inventory under the Ordinance, which threatens imminent revenue losses come January 1, 2025 (and indeed even before), only further necessitating the entry of immediate temporary relief to preserve the status quo.

41. Moreover, Plaintiffs are “adversely affected” by the Ordinance within the meaning of Tenn. Code Ann. §§ 39-17-1314(g) and (h).

42. The fee provision of Tenn. Code Ann. § 39-17-1314(i) requires that Plaintiffs prevail under Tenn. Code Ann. § 39-17-1314(g), which provides that “adversely affected” parties must challenge “[a]n ordinance ... that is adopted or enforced by a ... city ... that violates this section....”

43. The challenged Ordinance was “adopted or enforced by” the City of Memphis within the meaning of Tenn. Code Ann. § 39-17-1314(g)(1)(A)(i). Indeed, despite being placed on the November ballot, it was the City of Memphis that “adopt[ed]” the Ordinance, using variations of the word no fewer than eight times in the Ordinance document. *See, e.g.*, Ordinance § 4 (“BE IT FURTHER ORDAINED, That the City Council does hereby adopt the suggested proposal....”), § 10 (“BE IT FURTHER ORDAINED, that the adoption of this Referendum Ordinance shall take effect from and after the date it shall have passed ... and become effective as otherwise provided by law.”); *see also id.* at 8 (“I hereby certify that the foregoing is a true copy, and said document was adopted by the Council of the City of Memphis as above indicated and approved by the Mayor.”).

44. Pursuant to Tenn. Code Ann. § 39-17-1314(i), Plaintiffs therefore are “entitled to recover from the ... city” the “greater of” “(A) Actual damages, including consequential damages,

¹⁶ *Firearms Retailer Survey Report 2021 Edition*, Nat’l Shooting Sports Found., Inc. at 9 (2021), <https://tinyurl.com/56vkz23k>.

attributable to the ordinance[;] ... or (B) Three (3) times the plaintiff’s attorney’s fees[.]” In addition, Plaintiffs are “entitled to recover from the ... city” “[c]ourt costs, including fees[.]” And if Plaintiffs do not recover treble attorney’s fees under Tenn. Code Ann. § 39-17-1314(i)(1)(B), then Plaintiffs are “entitled to recover from the ... city” “[r]easonable attorney’s fees[.]”

COUNT THREE

Enactment of a Preempted “Extreme Risk Protection Order” Ordinance in Violation of Tenn. Code Ann. § 39-17-1329(b)

45. All foregoing allegations are repeated and realleged as if fully set forth herein.

46. The third Ordinance measure (Question 3 of 3) pertaining to “extreme risk protection orders” is *doubly* preempted under Tenn. Code Ann. § 39-17-1329(b), which provides that “the general assembly preempts the entire field of legislation regarding extreme risk protection orders to the exclusion of all county, city, town, municipality, or metropolitan government law, ordinances, resolutions, enactments, or regulation.”

47. On its face, the Ordinance purports to create “extreme risk protection orders.”

48. Tennessee law expressly preempts local creation of such “extreme risk protection orders.”

49. The members and supporters of GOA and GOF and the members of TFA are subject to an unreasonable risk that they may be arbitrarily red-flagged under the City of Memphis’ illegal “extreme risk protection orders” and have armed agents appear at their homes to seize their firearms under an Ordinance that is expressly preempted per Tennessee state law.

50. The catastrophic risk of such encounters cannot be overstated, especially since state law expressly forbids Memphis’s enactment of the red flag provision challenged here.

51. Defendants’ imminent enforcement of the unlawful Ordinance will cause Plaintiffs irreparable harm.

V. **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that relief be granted and judgment be entered in their favor and against Defendants as follows:

1. An order temporarily restraining Defendants, their officers, agents, servants, employees, and all persons in active concert or participation with them who receive actual notice of the order, from enforcing the Ordinance upon its effective date of January 1, 2025;

2. An order preliminarily enjoining Defendants, their officers, agents, servants, employees, and all persons in active concert or participation with them who receive actual notice of the injunction, from enforcing the Ordinance pending resolution of this action on the merits;

3. An order declaring that the challenged Ordinance violates and is preempted by Tenn. Code Ann. §§ 39-17-1307(g), 39-17-1314(a), and/or 39-17-1329(b);

4. An order permanently enjoining Defendants, their officers, agents, servants, employees, and all persons in active concert or participation with them who receive actual notice of the injunction, from enforcing the Ordinance;

5. Damages attributable to the Ordinance, court costs, and treble attorney's fees pursuant to Tenn. Code Ann. § 39-17-1314(i); and

6. Such other further relief as is necessary to effectuate this Court's judgment or that this Court otherwise deems just and appropriate.

Dated: November 13, 2024

Respectfully submitted,

/s/ John I. Harris III

John I. Harris III – TN Bar 12099
Schulman, LeRoy & Bennett PC
3310 West End Avenue, Suite 460
Nashville, Tennessee 37203

Tel: (615) 244 6670
jharris@slblawfirm.com

THIS IS THE FIRST APPLICATION FOR EXTRAORDINARY RELIEF.