IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI

CITY OF ST. LOUIS, *et al*.,	)	
Plaintiffs,	)	
v.	)	Case No. 21AC-CC00237
STATE OF MISSOURI, *et al.*,	)	
Defendants.	)	

STATEMENT OF INTEREST OF THE UNITED STATES

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INTRODUCTION

House Bill No. 85, known as the Second Amendment Preservation Act (hereafter "HB85" or "SAPA"), purports to nullify certain federal firearm laws, prohibits enforcement of those federal firearm laws, and imposes civil monetary penalties on political subdivisions and state law enforcement agencies that enforce, or assist in the enforcement of, those federal firearm laws. The United States understands that this Court will consider the legality of HB85 in a hearing currently scheduled for August 19, 2021. Accordingly, pursuant to 28 U.S.C. § 517,[1] the United States respectfully submits this Statement of Interest to assist the Court in evaluating whether HB85 is invalid under the United States Constitution and whether HB85 should be enjoined. Specifically, for the reasons set forth below, the United States supports a declaration that HB85 is unconstitutional and an injunction against its enforcement.

First, HB85 undermines law enforcement activities in Missouri, including valuable partnerships federal agencies have developed with state and local jurisdictions. As explained in the attached declaration, HB85 has already interrupted these activities and is expected to continue doing so if allowed to go into effect. *See* Declaration of Frederic D. Winston, Special Agent in Charge of the Kansas City Field Division of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), attached hereto as Ex. A ("Winston Decl."). Thus, the Federal Government has strong interests in an injunction against HB85 to preserve ongoing federal, state, and local law enforcement efforts.

Moreover, HB85 is legally invalid. Under the United States Constitution's Supremacy

[1] Section 517 provides that the "Solicitor General, or any officer of the Department of Justice, may be sent by the Attorney General to any State or district in the United States to attend to the interests of the United States in a suit pending in a court of the United States, or in a court of a State, or to attend to any other interest of the United States." 28 U.S.C. § 517.

Clause, the State of Missouri has no power to nullify federal laws. *See* U.S. Const. art. VI, cl. 2 ("This Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."). Thus, "in those areas where the Constitution grants the Federal Government the power to act, the Supremacy Clause dictates that federal enactments will prevail over competing state exercises of power." *United States v. Gillock*, 445 U.S. 360, 370 (1980). And state legislators, who are bound by an oath to support the Constitution of the United States, *see* U.S. Const. art. VI, cl. 3, have no power to "nullify [federal] statutes passed in pursuance" of the Constitution. *United States v. Reynolds*, 235 U.S. 133, 149 (1914); *see also Anderson v. Carkins*, 135 U.S. 483, 489 (1890) (observing that "it is not within the power of a state, directly or indirectly, to nullify or set . . . at naught" federal statutes).

HB85's invalidity under the Supremacy Clause provides an independent reason why HB85 should be enjoined by this Court. As explained further below, federal firearm laws are fully consistent with the United States Constitution, including the Second Amendment. Thus, § 1.420, which serves as the cornerstone provision of HB85 and declares such laws legally invalid, is unconstitutional. Likewise, all of HB85 must be declared invalid because the remaining substantive provisions are non-severable from that premise. Even apart from non-severability, those provisions of HB85 are independently invalid under the Supremacy Clause.

In sum, HB85 has caused, and will continue to cause, significant harms to law enforcement within the State of Missouri. HB85 is also plainly unconstitutional under the Supremacy Clause. For these reasons, the United States respectfully submits that federal law independently supports entry of the relief requested by the plaintiffs in this lawsuit—*i.e.*, a declaration that HB85 is

unconstitutional and an injunction against HB85's enforcement.[2]

LEGAL FRAMEWORK

I. Statutory Background

Congress regulates the sale and manufacture of firearms and ammunition through a comprehensive regulatory scheme established by the National Firearms Act, 26 U.S.C. §§ 5801-5872 ("NFA"), and the Gun Control Act of 1968, 18 U.S.C. §§ 921 *et seq*. ("GCA").

A. National Firearms Act

The NFA requires parties manufacturing or transferring certain firearms, as defined in the Act, to submit an application for such transactions, and also requires that such firearms be registered. *See* 26 U.S.C. §§ 5811-22, 5841. Firearms regulated under the NFA include machine guns and certain types of rifles and shotguns, as well as silencers and "destructive devices" (such as grenades). The NFA does not regulate pistols, revolvers, and most commonly used weapons, nor does the NFA actually prohibit ownership of regulated firearms.

B. Gun Control Act

In 1968, Congress enacted the GCA. Unlike the NFA, the GCA's definition of "firearms" is broad and encompasses "(A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device." 18 U.S.C. § 921(a)(3). The GCA states that any persons who "engage in the business of importing, manufacturing, or dealing in firearms, or importing or manufacturing ammunition" must receive a license to do so from the Attorney General. *Id.* § 923(a). The GCA prohibits anyone

[2] Aside from the issues discussed in this Statement of Interest—*i.e.*, the invalidity of HB85 under federal law, its non-severability, and its ongoing harm to federal law enforcement and public safety—the United States does not take a position on any other issues presented in this case.

other than a licensed firearms importer, manufacturer, or dealer from "engag[ing] in the business of importing, manufacturing, or dealing in firearms, or in the course of such business to ship, transport, or receive any firearm in interstate or foreign commerce[.]" *Id*. § 922(a)(1)(A).

Also under the GCA, federal firearms licensees must maintain records of importation, production, shipment, receipt, sale, or other disposition of firearms, *id*. § 923(g)(1)(A); 27 C.F.R. §§ 478.121-25, and may not transfer a firearm to an unlicensed person unless they complete a Firearms Transaction Record, ATF Form 4473. 27 C.F.R. § 478.124. Before making any over-the-counter firearms transaction, the licensee must verify the purchaser's identity and conduct a background check through the National Instant Criminal Background Check System ("NICS"). 18 U.S.C. § 922(t); 27 C.F.R. §§ 478.102, 478.124(c).[3] Additionally, under the GCA, certain categories of persons are prohibited from possessing firearms (provided that the requisite connection to interstate commerce is established), including felons, individuals convicted of misdemeanor crimes of domestic violence, individuals adjudicated as "mental defective[s]," illegal aliens, unlawful users of controlled substances, and others. 18 U.S.C. § 922(g).

Each firearm imported or manufactured must be identified by a serial number and a mark indicating the model of the firearm, the licensee's name or abbreviation, and the licensee's location. *Id*. § 923(i); 27 C.F.R. § 478.92(a)(1). License holders must report the theft or loss of any firearm to both ATF and local law enforcement authorities, and licensees must respond to requests by the Attorney General made in the course of a criminal investigation for information concerning the disposition of a firearm. 18 U.S.C. § 923(g)(6), (7). All records must be available at the licensees' business premises for ATF compliance inspections. *See* 27 C.F.R. § 478.121(b).

[3] The background check requirement and NICS were codified with the provisions of the GCA, but were enacted not by the GCA but by the Brady Handgun Violence Prevention Act, Pub. L. No. 103-159, 107 Stat. 1536 (1993).

Subject to the direction of the Attorney General, ATF has the authority to investigate criminal and regulatory violations of federal firearms laws. 28 U.S.C. § 599A; *see also* 28 C.F.R. § 0.130. Penalties for the violation of federal firearms laws include fines, imprisonment, and forfeiture. *See* 18 U.S.C. § 924.

II. Supremacy Clause

The U.S. Constitution's Supremacy Clause provides that "[t]his Constitution, and the laws of the United States which shall be made in pursuance thereof[,] . . . shall be the supreme law of the land[.]" U.S. Const. art. VI, cl. 2. Thus, the Supremacy Clause establishes not only that "the laws of the United States [are] dominant over those of any state," but also that "the activities of the Federal Government are free from regulation by any state." *Mayo v. United States*, 319 U.S. 441, 445 (1943). In addition to the obvious principle that states may not nullify valid federal laws, *see Reynolds*, 235 U.S. at 149, the Supreme Court has implemented the Supremacy Clause through several distinct but related doctrines: preemption of state law; intergovernmental immunity; and Supremacy Clause immunity for federal officials.

A. Preemption of State Law

Under the preemption doctrine, state law is invalid to the extent it conflicts with federal law. As the Supreme Court recently explained:

> Our cases have identified three different types of preemption—"conflict," "express," and "field,"—but all of them work in the same way: Congress enacts a law that imposes restrictions or confers rights on private actors; a state law confers rights or imposes restrictions that conflict with the federal law; and therefore the federal law takes precedence and the state law is preempted.

Murphy v. NCAA, 138 S. Ct. 1461, 1480 (2018) (citation omitted). Here, Congress has not wholly preempted the field of firearm regulation, but has expressly preempted state laws for which there is "a direct and positive conflict" with federal law. 18 U.S.C. § 927. Under that statutory provision, as well as governing principles of conflict preemption, "state laws are preempted when

they conflict with federal law," which includes both "cases where compliance with both federal and state regulations is a physical impossibility, and those instances where the challenged state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Arizona v. United States*, 567 U.S. 387, 399 (2012) (citations omitted).

B. Intergovernmental Immunity

The doctrine of intergovernmental immunity is derived from the seminal case of *M'Culloch v. Maryland*, 17 U.S. 316 (1819), in which the Supreme Court held that "the states have no power, by taxation or otherwise, to retard, impede, burden, or in any manner control, the operations of the constitutional laws enacted by congress to carry into execution the powers vested in the general government." *Id.* at 436. More recently, the Supreme Court has clarified that "[a] state regulation is invalid only if it regulates the United States directly or discriminates against the Federal Government or those with whom it deals." *North Dakota v. United States*, 495 U.S. 423, 435 (1990) (plurality op.); *see also id.* at 444 (Scalia, J., concurring in the judgment) ("All agree in this case that state taxes or regulations that discriminate against the Federal Government or those with whom it deals are invalid under the doctrine of intergovernmental immunity.").

This doctrine does not preclude states from enacting laws that incidentally burden the Federal Government. Rather, the governing principle is one of non-discrimination—states cannot treat the Federal Government worse than they treat others. *See Washington v. United States*, 460 U.S. 536, 544-45 (1983) ("The State does not discriminate against the Federal Government and those with whom it deals unless it treats someone else better than it treats them."); *compare, e.g.*, *North Dakota*, 495 U.S. at 438-39 (plurality op.) (upholding state liquor control regulations because although they burdened the Federal Government, they actually treated the Federal Government more favorably than others subject to the scheme), *with Davis v. Michigan Dep't of Treasury*, 489 U.S. 803, 817 (1989) (invalidating a state law that exempted state retirement benefits

from taxation, but imposed taxes on federal retirement benefits, because there were no significant differences between the two classes and thus the tax scheme was discriminatory).

C. Supremacy Clause Immunity for Federal Officials

Finally, a third form of federal supremacy arises in the context of state law actions instituted against federal officials. The foundational case is *In re Neagle*, 135 U.S. 1 (1890), in which the Supreme Court held that a state cannot prosecute a federal marshal for a murder that occurred in the course of the marshal's federal duties. *See id.* at 75 ("[I]f the prisoner is held in the state court to answer for an act which he was authorized to do by the law of the United States, which it was his duty to do as marshal of the United States, and if, in doing that act, he did no more than what was necessary and proper for him to do, he cannot be guilty of a crime under the law of the state of California."). Although this doctrine typically arises in the context of criminal prosecutions, it also applies to civil claims. *See, e.g.*, *Denson v. United States*, 574 F.3d 1318, 1346-48 (11th Cir. 2009) (applying *Neagle* to state tort claims); *Wyoming v. Livingston*, 443 F.3d 1211, 1213 (10th Cir. 2006) ("Supremacy Clause immunity governs the extent to which states may impose civil or criminal liability on federal officials for alleged violations of state law committed in the course of their federal duties.").

FACTUAL AND PROCEDURAL BACKGROUND

I. HB85

Missouri's HB85 was signed into law on June 12, 2021. In broad strokes, HB85 contains two sets of substantive provisions: (1) various "nullification" provisions purporting to declare certain federal firearm laws invalid; and (2) several "penalty" provisions purporting to limit the authority of individuals who enforce federal firearm laws and also imposing civil monetary penalties on state and local law enforcement agencies that employ such individuals.

A. Nullification Provisions

The cornerstone of HB85 is § 1.420, which states that "federal acts, laws, executive orders, administrative orders, rules, and regulations" falling into five categories "shall be considered infringements on the people's right to keep and bear arms, as guaranteed by Amendment II of the Constitution of the United States and Article I, Section 23 of the Constitution of Missouri[.]" *Id.* § 1.420. The so-called infringements include:

> (1) "[a]ny tax, levy, fee, or stamp imposed on firearms, firearm accessories, or ammunition not common to all other goods and services and that might reasonably be expected to create a chilling effect on the purchase or ownership of those items by law-abiding citizens,"[4]
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> (2) "[a]ny registration or tracking of firearms, firearm accessories, and ammunition,"
>
> (3) "[a]ny registration or tracking of the ownership of firearms, firearm accessories, and ammunition,"
>
> (4) "[a]ny act forbidding the possession, ownership, use, or transfer of a firearm, firearm accessory, or ammunition by law-abiding citizens" (as defined under HB85 by reference only to state law, *see supra* n.4), and
>
> (5) "[a]ny act ordering the confiscation of firearms, firearm accessories, or ammunition from law-abiding citizens."

Id. § 1.420(1)-(5).

HB85 further provides that any such purported infringements "shall be invalid to this state, shall not be recognized by this state, shall be specifically rejected by this state, and shall not be enforced by this state." *Id*. § 1.430. Moreover, HB85 provides that "[i]t shall be the duty of the courts and law enforcement agencies of this state to protect the rights of law-abiding citizens to keep and bear arms within the borders of this state and to protect these rights from the infringements defined under section 1.420." *Id.* § 1.440. Additionally, while not having

[4] The term "law-abiding citizens" is defined as those who may possess firearms under Missouri law. *See* HB85 § 1.480.1.

independent substantive effect, § 1.410 in the context of these other provisions makes clear that the General Assembly was purporting to nullify federal law.

B. Penalty Provisions

Beyond purporting to nullify federal law, HB85 also contains several provisions ostensibly limiting the authority of individuals to enforce federal law and penalizing those who do enforce federal law. Specifically, § 1.450 provides that:

> No entity or person, including any public officer or employee of this state or any political subdivision of this state, shall have the authority to enforce or attempt to enforce any federal acts, laws, executive orders, administrative orders, rules, regulations, statutes, or ordinances infringing on the right to keep and bear arms as described under section 1.420.

Id. § 1.450.

HB85 provides for civil penalties of $50,000 per occurrence against political subdivisions or law enforcement agencies that employ a law enforcement officer who "knowingly" violates § 1.450. *Id*. § 1.460. The law also imposes similar penalties on any political subdivision or law enforcement agency that "knowingly employs an individual acting or who previously acted as an official, agent, employee, or deputy of the government of the United States, or otherwise acted under the color of federal law within the borders of this state, who has knowingly" either (1) attempted to enforce the "infringements identified in section 1.420" or (2) has "[g]iven material aid and support to the efforts of another who enforces or attempts to enforce" them. *Id*. § 1.470. The law contains an expansive definition of "material aid and support," *see id.* § 1.480.2, but also contains a putative safe harbor provision that excludes from the penalty provisions certain prosecutions that have state-law corollaries. *See id*. § 1.480.3-.4.[5]

[5] In addition to the nullification and penalty provisions discussed above, HB85 also contains several non-substantive provisions. They are § 1.480, which sets forth an August 28, 2021 effective date and defines certain terms; § 1.485, which consists of a severability clause; and

II. Filing of Lawsuit by City of St. Louis, St. Louis County, and Jackson County

The present lawsuit is brought by the City of St. Louis, St. Louis County, and Jackson County (collectively "plaintiffs"). *See* Am. Petition (filed July 15, 2021). Plaintiffs seek declaratory and injunctive relief barring enforcement of HB85. *See id.* at 13-14. Plaintiffs generally challenge HB85 as being contrary to both state law and federal law, including the Supremacy Clause. *See id.* ¶¶ 24-29. Plaintiffs' petition also identifies several ways in which HB85 has harmed ongoing law enforcement efforts within the State of Missouri. *See id.* ¶ 30 (alleging that HB85 appears to prohibit plaintiffs from enforcing a city ordinance requiring firearm licensees to report failed NICS background checks, inputting data into federal databases, and participating in task force operations, and testifying in federal firearm cases). The State of Missouri thereafter responded to plaintiffs' amended petition, including by asserting that there is no "justiciable controversy ripe for adjudication" because plaintiffs "have failed . . . to identify a single, immediate, concrete dispute where SAPA has actually affected Plaintiffs' operations." *See* Answer & Aff. Defenses, at 6 ¶ 1 (filed July 26, 2021).

The United States understands that a hearing is scheduled for August 19, 2021, during which the Court will consider plaintiffs' requested relief against HB85. The United States does not intend to substantively appear at that hearing. Instead, the United States respectfully submits this Statement of Interest and accompanying declaration to assist the Court in evaluating whether to provide plaintiffs' requested relief.

ARGUMENT

The United States submits this Statement of Interest to emphasize three points. First, the United States has a strong interest in HB85 being enjoined, because HB85 has already impeded

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Section B, which states that HB85 takes immediate effect upon becoming law.

law enforcement efforts to promote public safety within the State of Missouri, including by interfering with ongoing federal, state, and local law enforcement partnerships. The public interest, therefore, strongly supports an injunction against HB85's enforcement, as plaintiffs here request. *See Humphreys v. Dickerson*, 216 S.W.2d 427, 429 (Mo. banc. 1948) (in deciding whether to issue injunctive relief, "the public interest is to be considered").

Second, the cornerstone of HB85—the provision declaring various federal firearm laws to be invalid—is itself contrary to the Supremacy Clause, and if that provision is invalid, then the remainder of HB85's substantive provisions are likewise invalid because they are non-severable from HB85's central nullification provision. Thus, the United States respectfully submits that, in order to enjoin all of HB85's substantive provisions, the Court need only resolve one constitutional issue—*i.e.*, the validity of § 1.420.

Third, to the extent the Court concludes that a provision-by-provision analysis of HB85 is necessary, the remaining substantive provisions of HB85 are independently unconstitutional under the Supremacy Clause. Accordingly, the United States Constitution supports an injunction against enforcement of HB85's substantive provisions, as plaintiffs here contend. *See* Am. Petition ¶ 24 (invoking the Supremacy Clause).

I. HB85 is Undermining Law Enforcement Activities in Missouri.

Before discussing the legal defects with HB85, it is first useful to explain why the Federal Government is filing this Statement of Interest. This discussion also demonstrates why a justiciable controversy exists today, as well as why an injunction against HB85 is necessary. Specifically, the United States has compelling interests in preventing crime and promoting public safety. *United States v. Salerno*, 481 U.S. 739, 745 (1987). HB85, however, has already undermined those critical law enforcement interests in three key ways.

First, HB85 interrupts important partnerships developed between federal, state, and local

jurisdictions and law enforcement officials. These partnerships frequently take the form of joint task forces, in which federally deputized state and local law enforcement officers serve alongside federal officials to enforce federal law. *See* Winston Decl. ¶¶ 15-16. These "task forces, as well as ATF's overall partnerships with state and local departments and agencies, are key to holding violent persons and those illegally using firearms accountable under the law." *Id.* ¶ 16. Federal law enforcement relies on these task forces, and these partnerships have produced significant results. *See id.* ¶¶ 16-17.[6]

HB85 undermines these critical partnerships and harms collective law enforcement efforts as a result. Indeed, HB85 has already prompted the withdrawal of nearly a quarter of ATF's state and local support. *See id.* ¶ 15 (listing withdrawals by 12 of the 53 state or local officers assigned to ATF task forces). These reductions in human resources have hindered ATF's abilities to effectively pursue the enforcement of federal law against criminals, including violent criminals. *See id.* ¶ 18.

Second, HB85 has limited federal law enforcement's access to essential information and other investigatory support from state and local partners. *See id*. ¶ 20. Beyond just task forces, law enforcement entities have also developed effective information-sharing networks to assist in solving and combating crime. These informational resources include assisting in FBI NICS referrals and providing access to crime-related data, police reports, investigative records, background information on investigative targets, and even access to physical evidence such as firearms and ammunition used in crimes. *See id.* ¶¶ 21-25. Having complete information available

[6] While HB85 has had the greatest negative consequences for ATF to date, it is also impacting or has the potential to impact other federal law enforcement agencies, including the Federal Bureau of Investigation (FBI), the Drug Enforcement Administration (DEA), and the United States Marshals Service (USMS). However, all things considered, and in the interest of brevity, separate declarations are not being provided from these agencies at this time.

to law enforcement entities facilitates these entities' ability to solve and prevent dangerous crimes.

A prime example of this critical information-sharing across jurisdictions is the National Integrated Ballistic Information Network, or "NIBIN," which is a vital resource to "any violent crime reduction strategy because it enables investigators to match ballistics evidence" in a particular case "with other cases across the nation." *Id.* ¶ 23. In the last three years, NIBIN has helped law enforcement officers in Missouri generate over 6,000 leads, including 3,149 leads in jurisdictions outside of where the lead was sourced. *See id.* ¶ 26. Further, from October 2019 to June 2021, NIBIN successfully identified approximately 200 suspects linked to firearm crimes in the State. *Id.* NIBIN is therefore "a critical tool in ATF's effort to combat federal firearm violations and violent crime in Missouri." *Id.* ¶ 25.

Because of HB85, however, several state and local law enforcement agencies have indicated that they will no longer input data into NIBIN or will only do so in limited circumstances. *See id.* ¶ 23. The Columbia Police Department, for instance, shut down an ATF NIBIN machine located on the department's premises. *Id.* ¶ 24. Because NIBIN "is only as good as the information inputted into the system," if "state and local law enforcement do not input data into NIBIN, the value of the system will be decreased, and the number of leads, cases, and successes will be reduced." *Id.* ¶ 25. Even aside from NIBIN, HB85 has limited federal law enforcement's access to other essential information and investigatory support. Some examples include the Missouri Information Analysis Center (MIAC) refusing to provide background information on investigative targets, and the Kansas City Police Department refusing to release investigative records or allow ATF access to firearms or ammunition in the department's custody for purposes of ATF inspection. *Id.* ¶¶ 21-22.

Third and finally, HB85 creates confusion regarding the validity of federal firearm laws

and federal enforcement authority. *See id.* ¶¶ 31, 33. Unless enjoined, HB85 stands to mislead both private citizens and the regulated community of federal firearm licensees in Missouri, all of whom are obligated under criminal penalty to comply with federal firearm laws. Indeed, since HB85 was passed, federal firearm licensees have raised questions and expressed confusion to ATF about their legal obligations, such as federal recordkeeping and reporting requirements. *See id.* ¶ 31. These inquiries prompted ATF to issue an informational letter to all federal firearm licensees in Missouri, explaining that HB85 does not alter the licensees' legal obligations under federal law. *Id.* If a licensee chooses to disregard those obligations due to HB85, not only will the licensee put itself at risk of legal consequences, but there also could be significant harm to ATF's ability to trace guns used in crimes and to ensure that prohibited persons do not gain access to guns in the first instance. *See id.* ¶ 30. As to private citizens, HB85's repudiation of federal authority threatens to provoke erroneous beliefs about—and potentially opposition to—federal agents performing their law enforcement duties, including executing search warrants, making arrests, and seizing firearms used in crimes. *See id.* ¶ 33.

In sum, in the few weeks since HB85 became law, significant damage to federal law enforcement operations has already occurred. This damage will only intensify if the law's penalty provisions are allowed to go into effect on August 28, 2021, as the State intends. *See id.* ¶ 19. Thus, given these significant harms to public safety, there is already a ripe, justiciable controversy, as well as an overwhelming public interest in enjoining HB85's enforcement.

II. The Cornerstone Provision of HB85 Is Preempted, and All Other Substantive Provisions Are Non-Severable.

HB85 is unlawful under the Supremacy Clause. The State of Missouri lacks authority to nullify valid federal law, including the firearm regulations at issue here. Once the central premise upon which HB85 stands is rejected—and federal firearm laws are recognized as valid—all

remaining substantive provisions of HB85 must also be rejected, because they are non-severable from § 1.420.

A. Section 1.420 Is Preempted Because It Directly Conflicts With, And Purports to Nullify, Federal Firearm Laws.

The cornerstone of HB85, § 1.420, facially conflicts with federal law and therefore is invalid. Specifically, § 1.420 lists five categories of federal firearm laws that Missouri declares "shall be considered infringements on the people's right to keep and bear arms, as guaranteed by Amendment II of the Constitution of the United States and Article I, Section 23 of the Constitution of Missouri[.]" HB85 § 1.420. Because those five categories of laws are valid federal firearm regulations, § 1.420 conflicts with federal law and therefore is invalid.

As discussed at the outset, states lack the authority to nullify federal law, which is what Missouri has attempted in § 1.420. *See, e.g.*, *Anderson*, 135 U.S. at 490 ("The law of congress is paramount; it cannot be nullified by direct act of any state, nor the scope and effect of its provisions set at naught indirectly."). Moreover, conflict preemption occurs when a state law "prevent[s] or frustrate[s] the accomplishment of a federal objective," as well as when it is "impossible for private parties to comply with both state and federal law." *Geier v. Am. Honda Motor Co., Inc.*, 529 U.S. 861, 873 (2000) (quotation omitted). Here, § 1.420 declares certain federal firearm laws to be invalid. Such a declaration directly conflicts with federal law, and could reasonably be expected to create "an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Arizona*, 567 U.S. at 399; *see supra* Part I; *cf. City of Aurora v. Spectra Commc'ns Grp., LLC*, 592 S.W.3d 764, 779 n.10 (Mo. banc 2019) (noting that in Missouri, "every act of the legislature is presumed to be valid until there is a judicial determination to the contrary").

Indeed, § 1.420 conflicts with and stands as an obstacle to federal law in numerous ways. For example, § 1.420 purports to invalidate "[a]ny registration or tracking of firearms," as well as

"[a]ny registration or tracking of the ownership of firearms," HB85 § 1.420(2), (3), both of which conflict with the GCA's recordkeeping requirements for federal firearm licensees. *See* 18 U.S.C. § 923(g)(1)(A) ("Each licensed importer, licensed manufacturer, and licensed dealer shall maintain such records of importation, production, shipment, receipt, sale, or other disposition of firearms at his place of business[.]"). Thus, HB85's directive to federal firearm licensees is that they are prohibited from tracking the ownership of firearms, whereas federal law makes such recordkeeping mandatory—thereby leaving federal firearm licensees in the impossible position of being unable to comply with both state and federal law. *See Geier*, 529 U.S. at 873 (state law is preempted if it is "impossible for private parties to comply with both state and federal law") (quotation omitted); *see also* Winston Decl. ¶¶ 29-32 (discussing the importance of federal firearm licensees' recordkeeping responsibilities with respect to the enforcement of federal law).

Moreover, HB85 purports to invalidate "[a]ny act forbidding the possession, ownership, use, or transfer of a firearm, firearm accessory, or ammunition by law-abiding citizens[,]" HB85 § 1.420(4), which is defined as any person "who is not otherwise precluded under state law from possessing a firearm" except for "anyone who is not legally present in the United States or the state of Missouri." *Id*. § 1.480.1. Because this provision invalidates any federal prohibitions on "possession, ownership, use, or transfer of a firearm by law-abiding citizens" as defined under the statute, *id.* § 1.420(4), it conflicts with a key element of the GCA providing that only federal firearm licensees are allowed to "engage in the business of . . . dealing in firearms." 18 U.S.C. § 923(a); *see also* Winston Decl. ¶ 30 (explaining that federal firearm licensees are critical for ensuring that prohibited persons do not obtain firearms).

This provision of HB85 would also invalidate several important federal criminal prohibitions for which there is no analogous crime under Missouri state law—*e.g.*, prohibitions on

possession of a firearm by a domestic-violence misdemeanant, 18 U.S.C. § 922(g)(9); by a person subject to a court protective order that complies with certain requirements, *id*. § 922(g)(8); or by a person dishonorably discharged from the military, *id*. § 922(g)(6). Additionally, although Missouri state law prohibits some felons from possessing firearms, *see* § 571.070(1), RSMo, that prohibition is not as expansive and does not extend to possession of ammunition as federal law does. *See* 18 U.S.C. § 922(g) (prohibiting possession by certain classes of individuals of "any firearm or ammunition"). Thus, HB85 would declare invalid the federal prohibition on possession of ammunition by felons. *See* HB85 § 1.420(4) (purporting to invalidate any federal law "forbidding the possession . . . of . . . ammunition by law-abiding citizens"). These consequences are not merely abstract: HB85 seeks to invalidate federal statutes that the Federal Government currently seeks to enforce, and previously has sought to enforce, within the State of Missouri. *See* Winston Decl. ¶ 28 (describing past prosecutions under certain of these federal prohibitions).

The federal firearms laws at issue have consistently withstood Second Amendment challenges. *See generally Dist. of Columbia v. Heller*, 554 U.S. 570, 626-27 (2008) ("[N]othing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms."). Indeed, the Eighth Circuit Court of Appeals has expressly upheld one of the federal prohibitions that HB85 would invalidate—*i.e.*, the prohibition on possession of a firearm by individuals who are subject to certain types of protection orders, 18 U.S.C. § 922(g)(8). *See United States v. Bena*, 664 F.3d 1180, 1184 (8th Cir. 2011) ("Insofar as § 922(g)(8) prohibits possession of firearms by those who are found to represent a credible threat to the physical safety of [an] intimate partner or child, it is consistent with a common-law tradition

that the right to bear arms is limited to peaceable or virtuous citizens." (quotations omitted)); *see also, e.g.*, *United States v. Skoien*, 614 F.3d 638, 644 (7th Cir. 2010) (en banc) (upholding the prohibition on possession of firearms by individuals convicted of a misdemeanor crime of domestic violence, 18 U.S.C. § 922(g)(9)).[7]

Because the federal laws declared invalid by HB85 are consistent with the Second Amendment, § 1.420 conflicts with those laws in violation of the Supremacy Clause.

B. The Remaining Substantive Sections of HB85 Are Non-Severable From Section 1.420.

Because § 1.420 is invalid, the remaining substantive sections of HB85 are also invalid because they are not severable from that section. The Missouri Supreme Court has established a two-part test for determining severability:

> First, this Court considers whether, after separating the invalid portions, the remaining portions are in all respects complete and susceptible of constitutional enforcement. Then, this Court considers whether the remaining statute is one that the legislature would have enacted if it had known that the rescinded portion was invalid.

Priorities USA v. State, 591 S.W.3d 448, 456 (Mo. banc 2020); *see also* HB85 § 1.485 (severability provision enacted as part of HB85).

Under the Missouri Supreme Court's test, all of the remaining substantive sections of HB85—*i.e.*, §§ 1.430, 1.440, 1.450, 1.460, and 1.470—are also preempted because they are inextricably intertwined with § 1.420 and thus depend on that section's continuing validity.

[7] The Eighth Circuit has also upheld other provisions of § 922(g) against Second Amendment challenges. *See, e.g.*, *United States v. Joos*, 638 F.3d 581, 586 (8th Cir. 2011) (upholding § 922(g)(1), which prohibits felons from possessing firearms); *United States v. Seay*, 620 F.3d 919, 924-25 (8th Cir. 2010) (upholding § 922(g)(3), which prohibits possession of firearms by users of controlled substances). Additionally, the Eighth Circuit has upheld 18 U.S.C. § 924(c), which criminalizes possession of a firearm in furtherance of a drug trafficking crime. *See United States v. Davis*, 347 F. App'x 267, 267 (8th Cir. 2009).

Specifically, each of these sections (except one, discussed in the next paragraph) expressly refers back to § 1.420. For example, § 1.440 provides that it is "the duty of the courts and law enforcement agencies of this state to protect the rights of law-abiding citizens to keep and bear arms within the borders of this state and to protect these rights from the infringements *defined under section 1.420*." HB85 § 1.440 (emphasis added). Similarly, § 1.450 provides that "[n]o entity or person . . . shall have the authority to enforce or attempt to enforce any federal acts . . . infringing on the right to keep and bear arms *as described under section 1.420*." *Id*. § 1.450 (emphasis added). Section 1.460, in turn, establishes civil penalties for any "political subdivision or law enforcement agency that employs a law enforcement officer who acts knowingly . . . to violate the provisions of *section 1.450* or otherwise knowingly deprives a citizen of Missouri of the rights or privileges ensured by Amendment II of the Constitution of the United States or Article I, Section 23 of the Constitution of Missouri[.]" *Id*. § 1.460 (emphasis added). And finally, § 1.470 establishes civil liability for "[a]ny political subdivision or law enforcement agency that knowingly employs" current and former government employees who "[e]nforced or attempted to enforce" or who gave "material aid and support to the efforts of another who enforces or attempts to enforce any of the infringements *identified in section 1.420*[.]" *Id*. § 1.470.1 (emphasis added). Because these subsections all refer back to § 1.420, either directly or indirectly, they are inextricably intertwined with § 1.420 and would not have been enacted absent § 1.420. *See Mo. Nat'l Educ. Ass'n v. Mo. Dep't of Labor & Indus. Rels.*, 623 S.W.3d 585, 595 (Mo. banc 2021) ("By its plain language, [the invalidated section] is essentially and inseparably connected with all other provisions of HB 1413; therefore, HB 1413 must be declared void in its entirety."); *see also Shrink Mo. Gov't PAC v. Maupin*, 71 F.3d 1422, 1427 (8th Cir. 1995) (applying Missouri severability law and concluding that "[e]very subsection . . . makes some reference to the expenditure limits that

we have held unconstitutional[,]" and thus "[t]he invalid portions are inextricably intertwined with the remainder of the statute"); *Akin v. Dir. of Revenue*, 934 S.W.2d 295, 301 (Mo. banc 1996) (severability is appropriate when the remaining provisions are "clearly segregat[ed] . . . from the troublesome sections").

Although § 1.430 does not expressly refer to § 1.420, it clearly encompasses and relies upon § 1.420, because § 1.430's scope is defined using nearly identical language as § 1.420. *Compare* HB85 § 1.430 ("federal acts, laws, executive orders, administrative orders, rules, and regulations . . . that infringe on the people's right to keep and bear arms as guaranteed by the Second Amendment to the Constitution of the United States and Article I, Section 23 of the Constitution of Missouri"), *with id.* § 1.420 (same). Stated differently, § 1.430 necessarily relies on the validity of § 1.420, as § 1.420 sets boundaries for what § 1.430 purports to declare "invalid to this state." *Id*. § 1.430. If § 1.430 were interpreted without reference to the federal laws listed in § 1.420, it would be a meaningless provision that simply duplicates the existing content of state and federal law—*i.e.*, declaring unconstitutional infringements invalid. *Cf. Mo. State Conf. of NAACP v. State*, 607 S.W.3d 728, 733 (Mo. banc 2020) ("[T]his Court must presume the legislature did not enact meaningless provisions."); *Priorities USA*, 591 S.W.3d at 457 ("Because the modified version of the affidavit would essentially replicate the information in the precinct register that every voter must sign, the legislature would not have enacted the modified affidavit.").

Accordingly, the substantive provisions of HB85 rest atop a house of cards, all falling once § 1.420 is invalidated.

III. Even Under a Section-by-Section Analysis, the Substantive Provisions of HB85 are Invalid Under the Supremacy Clause.

Because § 1.420 is invalid and the remaining provisions are non-severable, this Court therefore need not proceed any further. To the extent the Court were to conclude that a section-

by-section analysis of HB85 might be required, however, the result is the same: the Supremacy Clause independently invalidates all other substantive provisions of HB85.

A. The Additional Nullification Provisions Are Also Invalid.

In addition to § 1.420 discussed above, HB85 also contains two other nullification provisions, both of which are independently invalid under the Supremacy Clause. Section 1.430 provides that federal laws purportedly infringing on the right to keep and bear arms "shall be invalid to this state, shall not be recognized by this state, shall be specifically rejected by this state, and shall not be enforced by this state." HB85 § 1.430. Additionally, § 1.440 imposes a duty on state courts and law enforcement agencies to protect citizens from the enforcement of federal firearm laws. *See id*. § 1.440.

Both of these provisions conflict with federal firearm laws and impose obstacles to the effective execution of federal law, and therefore are preempted. Similar to § 1.420 discussed above, these provisions erroneously inform state and local jurisdictions, Missouri citizens, and businesses operating within Missouri (including federal firearm licensees) that federal firearm laws are "invalid" and "shall not be recognized" within Missouri. Moreover, these provisions also expose federal officials to potential civil and criminal penalties under state law. A federal official's duties may require them to undertake actions that, but for their federal responsibilities, would otherwise be criminal or subject to potential tort liability, and HB85 arguably could clear the path for such liability by declaring that federal firearm laws "shall not be recognized" by Missouri and that law-enforcement agencies shall protect against such infringements. HB85 §§ 1.430, 1.440.

By purporting to regulate the activity of federal officials enforcing federal law, these provisions violate the Supremacy Clause in three different ways. First, they are preempted as obstacles to the full and effective accomplishment of federal law. *See Geier*, 529 U.S. at 881 ("Because the rule of law for which petitioners contend would have stood as an obstacle to the

accomplishment and execution of the important . . . federal objectives that we have just discussed, it is pre-empted."); *Boyle v. United Techs. Corp.*, 487 U.S. 500, 505 (1988). Second, the provisions violate intergovernmental immunity because they attempt to invalidate and constrain the enforcement of federal firearm laws by federal officials. *See Hancock v. Train*, 426 U.S. 167, 167 (1976) ("[T]he activities of the Federal Government are free from regulation by any state."); *United States v. City of Arcata*, 629 F.3d 986, 991 (9th Cir. 2010) ("By constraining the conduct of federal agents and employees, the ordinances seek to regulate the government directly."); *see also North Dakota*, 495 U.S. at 435 (plurality op.). Third, the provisions are contrary to Supremacy Clause immunity because "federal officers who are discharging their duties in a state . . . are not subject to the jurisdiction of the state in regard to those very matters of administration which are thus approved by federal authority." *Ohio v. Thomas*, 173 U.S. 276, 283 (1899); *see In re Neagle*, 135 U.S. at 75. Thus, §§ 1.430 and 1.440 are independently invalid under the Supremacy Clause.

B. The Penalty Provisions are Independently Invalid, Notwithstanding the Tenth Amendment.

Apart from nullifying federal law, HB85 also restricts and penalizes individuals who do enforce federal law. *See* HB85 §§ 1.450, 1.460, 1.470. Collectively, these provisions are invalid under the Supremacy Clause in three distinct ways: (1) they purport to regulate federal officials' authority to enforce federal law; (2) they limit and penalize information-sharing with the Federal Government, or at least some jurisdictions have interpreted them in that manner; and (3) they specifically penalize the lawful exercise of federal authority.

Missouri's defense of these provisions is presumably based on the Tenth Amendment. *See id.* § 1.410.2(3) ("The limitation of the federal government's power is affirmed under Amendment X of the Constitution of the United States[.]"). To be sure, "[t]he Federal Government may [not] . . . command the States' officers, or those of their political subdivisions, to administer

or enforce a federal regulatory program." *Printz v. United States*, 521 U.S. 898, 935 (1997). But HB85 goes beyond just declining to assist in the enforcement of federal law, and instead specifically discriminates against the lawful exercise of federal authority. As discussed further below, that discrimination is unlawful notwithstanding the Tenth Amendment.

1. The State Cannot Deny Federal Authority to Enforce Federal Law.

Section 1.450 provides that "[n]o entity or person, including any public officer or employee of this state or any political subdivision of this state, shall have the authority to enforce or attempt to enforce any federal acts . . . infringing on the right to keep and bear arms as described under section 1.420." HB85 § 1.450. On its face, this provision states that "[n]o entity or person" has authority to enforce federal law, which necessarily includes federal officials. Accordingly, this provision is invalid. Just as with HB85's nullification provisions, this section conflicts with federal law, directly regulates federal officials in the course of performing their federal duties, and potentially exposes them to civil and criminal liability for their official actions. Thus, it is invalid under the Supremacy Clause as applied to federal officials.

To the extent this provision is not invalidated, it should not be interpreted as limiting the ability of state and local officials who are federally deputized Task Force Officers ("TFOs") to continue assisting in the enforcement of federal law.[8] Several jurisdictions have interpreted HB85 as requiring them to withdraw their federally deputized TFOs. *See* Am. Petition ¶ 16 (noting that "plaintiffs employ law enforcement officers who are temporarily assigned to assist federal law enforcement officers in enforcing federal and state laws" and that "[p]laintiffs are in doubt

[8] When a state law enforcement officer serves on a federal task force, that state officer is often deputized by the U.S. Marshals Service as a Deputy United States Marshal. *See generally* 28 U.S.C. §§ 561(f), 566(c); 28 C.F.R. § 0.112(b). There are other statutory sources of federal deputation authority as well. *See, e.g.*, 21 U.S.C. § 878 (deputation related to drug investigations).

concerning their rights, duties and liabilities under HB 85 in that regard"); Winston Decl. ¶ 15. When federally deputized TFOs enforce federal laws, however, they typically do so in a federal capacity based on their *federal* authority, not pursuant to their authority under state law. *See, e.g.*, *Colorado v. Nord*, 377 F. Supp. 2d 945, 949 (D. Colo. 2005) ("Courts have consistently treated local law enforcement agents deputized as federal agents and acting as part of a federal task force as federal agents." (citing cases)). As properly interpreted, then, HB85 removes state and local officers' authority only under *state* law, but does not affect TFOs' authority to enforce federal law under federal authority bestowed by federal deputations.[9]

2. Any Information-Sharing Restrictions with the Federal Government Would Be Invalid.

Several jurisdictions also have interpreted HB85 as prohibiting them from sharing certain information with the Federal Government, including information that is critical to investigating crime. *See* Part I, *supra*; Winston Decl. ¶¶ 20-27. To the extent HB85 actually limits such information-sharing, those restrictions would be constitutionally invalid.

As an initial matter, it is unclear whether HB85 actually prohibits any information-sharing with the Federal Government. Mere information-sharing is distinct from "authority to enforce or attempt to enforce" federal law, HB85, § 1.450, and HB85's prohibition on giving "material aid and support" appears to apply only to "physical assets," not provision of intangible information. *See id.* § 1.480.2. Nonetheless, several jurisdictions have interpreted HB85 as prohibiting information-sharing; if accurate, any such prohibition would be invalid for multiple reasons.

[9] The Federal Government is not arguing that Missouri is compelled to provide state and local officials to assist in the enforcement of federal law. Rather, the point here is that, as a matter of statutory interpretation, § 1.450 should not be interpreted as prohibiting state and local officials from becoming federally deputized. The text of § 1.450 simply deprives state and local officials of authority under state law; it does not prohibit them from obtaining additional authority under federal law.

First, any such information-sharing restrictions would be directed specifically at the Federal Government and therefore violate intergovernmental immunity. HB85 would prohibit Missouri officials from sharing information *only* with the Federal Government—not with any other states' law enforcement agencies, even if some of those states might have identical (or even stricter) firearm laws than the Federal Government. For example, since the enactment of HB85, the Federal Government no longer receives important information from a number of state and local partners, such as background information on investigative targets from the Missouri Information Analysis Center. *See* Winston Decl. ¶ 21. Meanwhile, every other state's law enforcement agency remains eligible to receive such information, regardless of the content of those states' laws. *Cf.* § 610.120(1), RSMo (providing that even confidential investigative records may be made available to other "criminal justice agencies for the administration of criminal justice"). Thus, Missouri discriminates uniquely against the Federal Government and treats every other state better than the Federal Government. *See Washington*, 460 U.S. at 544-45 (a state "discriminate[s] against the Federal Government" when "it treats someone else better than it treats them").[10]

Second, the constitutional defects are heightened further to the extent HB85 is construed as prohibiting state and local officials from testifying in federal court or providing information

[10] The Tenth Amendment is not a valid defense for this unlawful discrimination, because the anti-commandeering doctrine is not a license to discriminate against the Federal Government in contravention of the intergovernmental immunity doctrine. For example, although the Tenth Amendment would likely prevent the Federal Government from compelling a state to regulate the sale of liquor in a particular way, a state still cannot enact a regulatory regime that discriminates uniquely against the Federal Government. *See North Dakota*, 495 U.S. at 431-35 (plurality op.) (noting that "the State has 'virtually complete control' over the importation and sale of liquor," but still analyzing whether the State's regime "discriminates against the Federal Government"). Moreover, the Tenth Amendment does not protect states' decisions to refuse to provide information to the Federal Government. *See Reno v. Condon*, 528 U.S. 141, 151 (2000) (upholding a federal law that did not "require the States in their sovereign capacity to regulate their own citizens" but simply "regulate[d] the States as the owners of data bases"); *Printz*, 521 U.S. at 918.

regarding federal offenses to the Federal Government, all of which are activities protected under federal law. *See* 18 U.S.C. §§ 1512(d), 1513(e); *see also In re Quarles*, 158 U.S. 532, 535 (1895); *Williams v. Allen*, 439 F.2d 1398, 1400 (5th Cir. 1971). Preemption would therefore apply, particularly if HB85 were construed as preventing officials from complying with federal subpoenas. Courts have repeatedly held that state laws and other rules must yield to federal subpoenas. *See Standing Akimbo, LLC v. United States*, 955 F.3d 1146, 1158 n.21 (10th Cir. 2020) (IRS summons); *Presley v. United States*, 895 F.3d 1284, 1292 (11th Cir. 2018) (same); *United States v. Zadeh*, 820 F.3d 746, 754-55 (5th Cir. 2016) (DEA subpoena); *Or. Prescription Drug Monitoring Program v. DEA*, 860 F.3d 1228, 1236 (9th Cir. 2017) (same); *Baylson v. Disciplinary Bd. of Supreme Ct. of Pa.*, 975 F.2d 102, 111-12 (3d Cir. 1992) (grand jury subpoena to attorneys); *see also In re Grand Jury Subpoena*, 198 F. Supp. 2d 1113, 1115 (D. Alaska 2002) ("District courts all over the country have subscribed to the proposition that the Supremacy Clause gives federal grand jury investigative powers precedence over state confidentiality statutes."). Thus, HB85 is invalid to the extent it restricts or penalizes information-sharing with the Federal Government.

3. The State Cannot Penalize the Lawful Exercise of Federal Authority, Including by Former Federal Employees.

HB85 is also invalid because it specifically penalizes the lawful exercise of federal authority. In particular, § 1.460 enacts a $50,000 monetary penalty on "[a]ny political subdivision or law enforcement agency that employs a law enforcement officer who acts knowingly . . . to violate the provisions of section 1.450[.]" HB85 § 1.460. Additionally, § 1.470 establishes a separate $50,000 civil penalty for any political subdivision or law enforcement agency that employs an individual who previously served as a federal official (or acted under color of federal law) and enforced federal firearm laws, or who provided material aid and support to someone who enforced federal firearm laws, subject to certain exceptions. *See id.* §§ 1.470, 1.480.

These provisions are invalid under the doctrine of intergovernmental immunity. The provisions attach liability to the lawful exercise of authority *only* if federal law is enforced. Thus, these provisions likewise treat other states more favorably than the Federal Government. *See City of Arcata*, 629 F.3d at 991 ("The cities' differential treatment of identical conduct based on the actor's status as a federal agent or employee fits squarely within this [discrimination] framework."). Indeed, § 1.470 imposes a unique disadvantage on former federal officials and task force officers—by effectively precluding them from seeking state employment, even though other states' law enforcement officers remain free to seek employment within Missouri regardless of their prior law enforcement activities. These monetary penalties imposed by Missouri specifically on the lawful exercise of federal authority are invalid. *See Timlin v. Myers*, 980 F. Supp. 1100, 1108 (C.D. Cal. 1997) (invalidating state law reducing retirement benefits of former state employees who went on to accept a federal position, and holding that "[b]y favoring state and local government employees over federal employees the state is violating the principles of intergovernmental immunity").

Finally, neither *Printz* nor the Tenth Amendment can justify this discrimination against federal law. Although a state is generally free to *decline* to enforce federal law, the state may not affirmatively *penalize* the lawful enforcement of federal law. *See M'Culloch*, 17 U.S. at 436 ("[T]he states have no power, by taxation or otherwise, to retard, impede, burden, or in any manner control, the operations of the constitutional laws enacted by congress to carry into execution the powers vested in the general government.").[11] Here, because these provisions go beyond neutral

[11] The operative Tenth Amendment principle is therefore one of neutrality, which courts have applied in similar contexts involving discrimination against federal law. *See, e.g.*, *Howlett By & Through Howlett v. Rose*, 496 U.S. 356, 371-72 (1990) (jurisdiction of state courts); *Nash v. Fla. Indus. Comm'n*, 389 U.S. 235, 239 (1967) (state labor benefits).

rules or decisions not to enforce federal law, and instead affirmatively penalize the lawful exercise of federal authority, they are invalid.

CONCLUSION

For the foregoing reasons, HB85 in its entirety is invalid under the Supremacy Clause. Moreover, declaring HB85 invalid will ensure effective enforcement of federal law, and will promote public safety within Missouri.

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Respectfully submitted,

SAYLER A. FLEMING
United States Attorney
Eastern District of Missouri

TERESA A. MOORE
Acting United States Attorney
Western District of Missouri

/s/ Alan T. Simpson
ALAN T. SIMPSON (Mo. Bar 65183)
Assistant United States Attorney
Western District of Missouri
400 East 9th Street, Room 5510
Kansas City, MO 64106
Telephone: (816) 426-3130
Fax: (816) 426-3165
Email: alan.simpson@usdoj.gov

BRIAN M. BOYNTON
Acting Assistant Attorney General
Civil Division

BRIAN D. NETTER
Deputy Assistant Attorney General

ALEXANDER K. HAAS
Director

JACQUELINE COLEMAN SNEAD
Assistant Branch Director

DANIEL SCHWEI
Special Counsel

/s/ Cristen C. Handley
CRISTEN C. HANDLEY (Mo. Bar 69114)
DANIEL RIESS
Trial Attorneys
U.S. Department of Justice
Civil Division, Federal Programs Branch
1100 L Street, N.W.
Washington, D.C. 20005
Telephone: (202) 305-2677
Fax: (202) 616-8460
Email: Cristen.Handley@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that this document is being filed electronically with the Cole County Circuit Court Clerk. All counsel of record are served through the electronic filing system as provided by Missouri Supreme Court Rule 103.08.

/s/ Cristen C. Handley
Cristen C. Handley, MO Bar No. 69114