

MISSOURI CIRCUIT COURT
NINETEENTH CIRCUIT
(Cole County)

CITY OF ST. LOUIS)	
)	
And)	
)	
ST. LOUIS COUNTY,)	
)	
Plaintiffs,)	
)	
v.)	No.
)	Div.
STATE OF MISSOURI,)	
Serve: Eric Schmitt)	
Office of Attorney General)	
207 High Street)	
Jefferson City, Mo.)	
65102)	
)	
)	
And)	
)	
ERIC SCHMITT, Attorney General)	
For the State of Missouri)	
Serve: Office of Attorney General)	
207 High Street)	
Jefferson City, Mo.)	
65102)	
)	
)	
Defendants.)	

PETITION FOR DECLARATORY JUDGMENT AND INJUNCTION

INTRODUCTION

A recently enacted Missouri law, formerly known as HB 85 and HB 310 (collectively “HB 85”), was adopted as the latest step in ongoing efforts to nullify federal gun laws. HB 85, however, is unconstitutional under the United States and Missouri constitutions.

This Petition for Declaratory Judgement and injunctive relief does not to ask the Court to infringe upon any constitutionally guaranteed right of law-abiding individuals, including the right to bear arms; rather, the Plaintiffs ask the Court to recognize that HB 85 infringes upon the constitutional rights guaranteed by both the Missouri and United States' constitutions and curtail law enforcement officers' ability to investigate, apprehend and prosecute criminals.

There can be little doubt that those who enacted HB 85 recognized the constitutional infirmities contained therein, as Governor Parson's spokesperson stated, "The Governor is aware of the legal implications of this bill."¹ Governor Parson stated at the signing of the bill ceremony, after stating that this will stop people like Vice President Kamala Harris from coming to the front door of Missourians and taking their guns, that "The purpose of the bill is to stand up to the Federal government."²

The political rhetoric clouding the constitutional infirmities of HB 85 were addressed by the Missouri Sheriffs' Association in its released statement against HB 85, assuring its constituency that this opposition is not about infringing upon anyone's right to bear arms further stating, "This disingenuous and misleading campaign is unjustified and is intended to cause undue alarm for our constituents."³

Further, HB 85 will chill law enforcement officers from protecting the communities in which they serve and will deter individuals from a career in law

¹ https://www.stltoday.com/news/local/crime-and-courts/parson-will-sign-second-amendment-bill-declaring-federal-gun-laws-invalid-in-missouri/article_de8df2f8-5d00-50a9-91ef-6dbacb523d6a.html
² <https://www.ky3.com/2021/06/12/gov-parson-expected-sign-hb-85-into-law-creating-second-amendment-preservation-act-missouri/>
³ <https://www.northwestmoinfo.com/local-commentary/missouri-sheriffs-association-missouri-sheriffs-united-preserving-the-right-to-bear-arms/>

enforcement. Since its enactment, at least one police chief has publicly indicated his recent resignation is based on passage of HB 85 and stated,

This vague language will create a flood of weaponized litigation that will chill the legitimate peacekeeping duties of police... This will decrease public safety and increase frivolous lawsuits designed to harass and penalize good, hard-working law enforcement agencies. Highly effective partnerships between local and federal law enforcement agencies will have to be reevaluated.⁴

As Missouri House Minority Leader Crystal Quade (D-Springfield) stated on June 11 2021⁵:

[House Bill 85] is a radical, dangerous and obviously unconstitutional attempt to declare that Missouri will refuse to follow federal gun laws. When people are looking for real solutions on crime, policing and public safety, Governor Parson and the Republican legislature have instead chosen to preserve Missouri's growing reputation for extremist and dangerous laws. The new law even allows criminals who violate federal gun law to sue our local law enforcement officers for a minimum \$50,000 fine if they in any way assist with federal investigations. It quite literally defunds the police and gives that taxpayer money to convicted criminals... [HB 85 is] unconstitutional and this Court should declare [it] so.

HB 85 violates the United States Constitution's Supremacy Clause, which provides that federal law preempts state law. History has tested the Supremacy Clause and passed judgment on past generations' nullification attempts. And the courts have consistently emphasized that states do not have the power to nullify federal laws.

⁴ https://www.stltoday.com/news/local/crime-and-courts/ofallon-mo-police-chief-resigns-cites-gov-parsons-attempt-to-invalidate-federal-gun-laws/article_719572b7-2fac-5bd0-986f-54db3596fa9d.html

⁵ <https://www.fourstateshomepage.com/news/politics/second-amendment-preservation-act-governor-parson-to-sign-hb-85-into-law/> and <https://www.ky3.com/2021/06/12/gov-parson-expected-sign-hb-85-into-law-creating-second-amendment-preservation-act-missouri/>

HB 85 also violates the Missouri Constitution in several respects. For example, the state legislature does not have the power to usurp the powers and authorities that the Missouri Constitution grants charter cities and counties. HB 85 has other elementary flaws: HB 85 does not contain a single subject; as enacted, it does not have clear title; it violates the original purpose; it exceeds the limitation on introduction of bills; it creates special laws; and it impose an emergency clause not supported by facts stating an actual emergency. HB 85 also infringes upon the separation of powers of the branches of state government.

In misguided zeal to prevent imaginary threats to the right to keep and bear arms, the political branches in our state government blatantly violated the federal and state constitutions by attempting to nullify federal gun laws. The consequences of HB 85 are tangible and real: they will make it easier for criminals to use guns in committing violent acts, they will give gun violence a safe haven in Missouri, and local governments like the plaintiffs may be disqualified from receiving federal grants and technical assistance through the United States Department of Justice. It is up to this Court to declare HB 85 unconstitutional. It should do so now.

PARTIES

1. Plaintiff City of St. Louis is a constitutional charter city organized and existing under law.
2. Plaintiff St. Louis County, Missouri is a constitutional charter county organized and existing under law.

3. Defendant State of Missouri, is a political body organized and existing under the Missouri Constitution and the United States Constitution, acting by and through the General Assembly and Governor, and enacts and enforces statutes of the State.

4. Defendant Hon. Eric Schmitt is the Attorney General of Missouri and represents the State of Missouri in actions against it. He is amenable to service under Rule 87.04.

JURISDICTION AND VENUE

5. This court has jurisdiction and venue is proper pursuant to Sections 478.070 RSMo and 527.010-.130 RSMo. The Attorney General's office is located in Cole County and the capital for the state of Missouri is located in Cole County.

STANDING

6. Plaintiffs have standing to proceed as they have legally protectable interests in the outcome of this action in that they employ and hire law enforcement officers who regularly enforce federal gun laws, and therefore are at risk of civil penalty for dutiful performance of their jobs under HB 85. Additionally, Plaintiffs will incur substantial cost in reviewing, and drafting and realigning ordinances, regulations, forms, and other documents or procedures as may be required under the unlawful HB 85 as enacted.

7. HB 85 creates a justiciable controversy that presents a real, substantial, presently-existing controversy as to which specific relief is sought that is ripe for judicial determination. Further, there is no adequate remedy available at law, and Plaintiffs will suffer irreparable harm because HB 85 contained an invalid Emergency Clause, thereby immediately impacting thousands of employees in law enforcement whose duties to enforce state and federal gun laws will be adverse, and whose employment and

livelihoods may be at risk due to the unlawful civil penalties attached to performance of those duties. Further, not only will plaintiffs be required to substantially modify ordinances, rules regulations and permit practices to meet these unlawful mandates, but public safety of plaintiffs' constituents will be at risk if forced to disregard Federal gun laws currently in place. Additionally, if enforced, Plaintiffs will be restrained from exercising their constitutional rights derived from their status as charter forms of government because of the prohibition of hiring certain individuals and setting forth the terms and conditions of the employment of said individuals.

GENERAL ALLEGATIONS

8. HB 85 as enacted generally addresses a wide-ranging variety of topics, including: (1) Rejection of Federalism and unconstitutional disregard for the Supremacy clause; (2) Unlawful encouragement to disregard and invalidate Federal law; (3) Misapplication of the Commerce Clause; (4) Misapplication of the Federal government's taxing powers; (5) Unconstitutional, ambiguous and unlimited rejection of all federal law, acts, executive orders, administrative orders, rules and regulations affecting the Second Amendment to the US Constitution; (6) Rejecting all federal taxing authority that affects purchase or ownership of guns; registering or tracking of guns, ammunition and accessories; registering or tracking of ownership of same; possessing, ownership, use, transfer of same; confiscating of same; (7) Disregard for separation of powers by imposing duties upon the judicial branch; (8) Invalidating Plaintiffs' autonomy as granted to them under the Missouri Constitution regarding employment of law enforcement personnel and duties, and attempting to impose unconstitutional penalties upon said employees and Plaintiffs; (9) Unlawfully abrogating sovereign immunity as an

affirmative defense; (10) Unconstitutional invalidation of multiple criminal laws, procedures, rules, regulations and protocols instituted by the Federal government, State of Missouri and Plaintiffs herein; (11) Misuse of the Emergency Clause.

9. Despite the unconstitutionality of HB 85 as enacted, The Governor signed HB 85 on 6/14/21. It was effective immediately and will stay in effect if not enjoined.

COUNT I

DECLARATORY JUDGMENT THAT HB 85 (SECTION 1.410) VIOLATES THE MISSOURI CONSTITUTION, AND FOR INJUNCTION AND OTHER RELIEF

10. Plaintiffs adopt and incorporate Paragraphs 1-9 as similarly numbered herein.

11. During the legislative session in 2021, the General Assembly enacted HB 85, to be known and cited as "Second Amendment Preservation Act." A copy of said HB 85 as enacted is attached hereto as Exhibit A, and incorporated herein by reference. HB 85 has been signed by the Governor and filed with the Secretary of State. The law contains an emergency clause and is therefore now in force.

12. HB 85, at §1.420, declares certain federal statutes and regulations to be unconstitutional as violative of the Second Amendment to the United States Constitution and Mo.Const. art. I, §23, but, on information and belief, no federal or state court has declared any such regulations to be unconstitutional.

13. HB 85 further provides at §1.450: "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."

14. Because §1.420 of HB 85 does not identify specific statutes, executive orders, rules or regulations that are deemed unconstitutional, but rather describe the subject matter of such statutes, executive orders, rules and regulations, plaintiffs are in doubt concerning their rights, duties and liabilities under HB 85 with respect to what federal statutes, executive orders, rules or regulations may not be enforced.

15. HB 85 further provides at §1.460 that any political subdivision that employs a law enforcement officer who knowingly violates §1.450 shall be liable to an "injured party in an action at law, suit in equity, or other proper proceeding for redress, and subject to a civil penalty of fifty thousand dollars per occurrence." Because §1.420, and therefore §1.450, are vague and indefinite, plaintiffs are in doubt concerning their potential liability under §1.460, and also concerning their other rights, duties and liabilities under HB 85 in that regard. Further, plaintiffs employ law enforcement officers who are temporarily assigned to assist federal law enforcement officers in enforcing federal and state laws. Plaintiffs are in doubt concerning their rights, duties and liabilities under HB 85 in that regard.

16. Plaintiffs have charter forms of government, and as such are subject to Article VI, Sec. 18(b), 19(a) and 31. Section 18(b) requires specific provisions for "...the numbers, kinds, [and] manner of selection...of the county officers, and for the exercise of all powers and duties of county officers prescribed by the constitution and laws of the state." Sections 19(a) and 31 similarly provide direct grants of authority to constitutional charter cities to exercise powers and duties with regard to municipal affairs.

17. As to charter cities, the Mo. Const. Art. VI Sec. 22 provides that:

No Law shall be enacted creating or fixing the powers, duties or compensation of any municipal office or employment, for any city framing or adopting its own charter...

18. Further, Mo. Const. Art. VI Sec. 18(e) states:

[No] law shall provide for any other office or employee of the county or fix the salary of any of its officers or employees.

19. HB 85 further provide at §1.470 that any political subdivision that knowingly employs an individual who is acting or has acted as an official, agent, employee, or deputy of the government of the United States, who, after adoption of the section has knowingly enforced or attempted to enforce statutes, executive orders, rules or regulations declared unconstitutional in §1.420, shall be subject to a civil penalty of \$50,000 per employee so hired by the political subdivision. Because §1.420 is vague and indefinite regarding what statutes, executive orders, rules or regulations cannot be enforced, plaintiffs are in doubt concerning their rights, duties and liabilities under §1.470.

20. Under the Declaratory Judgment Act, §527.020, RSMo, any person whose rights, status or other legal relations are affected by a statute, may have determined any question of construction or validity arising under the statute, and obtain a declaration of rights, status or other legal relations thereunder.

21. Plaintiffs have employed and continue to employ law enforcement officers who have or will, in the discharge of their official duties, undertake at times to enforce the provisions of federal law regarding firearms registration, possession and transfer. Plaintiffs and their employees are therefore at risk of civil penalties and other liabilities by reason of HB 85.

22. The plaintiffs' claim for declaratory relief concerning HB 85 is appropriate and ripe for judicial resolution, in that it is a real, substantial and presently existing controversy, and plaintiffs have no adequate alternative remedy. The Court therefore has authority under §§527.010 et seq. to declare the rights and status of the parties and to determine the question of statutory construction presented herein.

23. Further, the Supremacy Clause of the Constitution of the United States provides in pertinent part: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, 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."

24. The Missouri Constitution, article II, §1 provides: "The powers of government shall be divided into three distinct departments—the legislative, executive and judicial—each of which shall be confided to a separate magistracy, and no person, or collection of persons, charged with the exercise of powers properly belonging to one of those departments, shall exercise any power properly belonging to either of the others, except in the instances in this constitution expressly directed or permitted."

25. By reason of the constitutional provisions quoted above, the General Assembly lacks authority to declare any federal acts, laws, executive orders, administrative orders, rules, regulations, statutes, or ordinances to be unconstitutional.

26. Further, by reason of the charter status of each plaintiff, and the constitutional provisions related to charter governments, the General Assembly lacks authority to regulate and prohibit the hiring of certain individuals.

27. There is a ripe and justiciable controversy subsisting between plaintiffs and the State of Missouri, because plaintiffs' rights, status and legal relations are currently subject to the terms of HB 85, in that plaintiffs are at risk of liability thereunder on account of activities of law enforcement officers in their employ, as same violates the charter city and county provisions under Missouri Constitution, and there is a real and subsisting controversy between plaintiffs and the State of Missouri regarding the validity of HB 85.

28. Further, HB 85 violates multiple procedural enactment provisions including: Special Law; Single Subject; Clear Title; Original Purpose and Limitation on Introduction of HB 85 procedural in violation of the Missouri Constitution. Specifically, HB 85 was enacted in the form of “SENATE SUBSTITUTE FOR SENATE COMMITTEE SUBSTITUTE FOR HOUSE COMMITTEE SUBSTITUTE FOR HB 85 NOS. 85 & 310”. See Ex, A hereto. However, HB 85 and 310, as originally introduced, describe their purpose as to enact sections “relating to additional protections to the right to bear arms.” The title of the original HB 85 and the enacted HB 85 conveys no hint regarding limitations on the authority of political subdivisions to hire police officers or to enter into cooperative agreements with federal law enforcement agencies, nor is there any indication of the creation of the causes of action or penalties imposed on political subdivisions or police officers employed by them. Similarly, by combining limitations on the authority of political subdivisions and their police officer employees with the creation of special causes of action and declarations of nullity of federal laws, HB 85 as enacted contain multiple subjects having nothing to do with the purpose stated in the title.

29. The effect of HB 85 on Plaintiffs and operation of their law enforcement departments and staff are innumerable, and almost assuredly disastrous. Some of the many issues include:

A. In Missouri, all firearm transfers by licensed dealers are processed directly through the National Instant Criminal Background Check System. If an applicant fails the National Instant Criminal Background Check System, there are no reporting requirements regarding the failure. Thus, the City of St. Louis has enacted Ordinance 71041 to complement Federal law by creating reporting requirements for those instances. HB 85 appears to preclude enforcement of that ordinance, in derogation of the authority of Plaintiff City under Mo. Const. art. VI, Sec. 19(a).

B. Plaintiffs City and County also participate in the National Integrated Ballistic Information Network (“NIBIN”), which contributes to the solution of crimes and apprehensions of criminals as a result of seizures of firearms and subsequent ballistic testing. The current legislation appears to preclude continued use of NIBIN.

C. Plaintiffs’ Divisions of Police and Department of Police are parties to various agreements with federal law enforcement agencies and participates in joint task forces with federal law enforcement officers. Under such arrangements, City and County police officers may assist in arrests that involve federal and state gun law violations. As enacted, the legislation appears to preclude such cooperative ventures except to the extent state law parallels federal law with regard to firearms. For example, (Organized Crime Drug Enforcement Task Force

(OCDETF) Gateway Strikeforce and the ATF Strikeforce work with County and City law enforcement, respectively, to reduce violent crime in neighborhoods. Inability to participate in such joint ventures with federal officers will harm law enforcement activities, reduce public safety and leave law enforcement officers adrift as to whether to carry out their duties at risk of significant financial penalty as to serious crimes involving gun violence.

D. Police Officers employed by St. Louis County are scheduled to testify in various criminal cases in federal court involving gun laws this week. Their ability to continue their support, investigation and testimony in such proceedings is unknown as a result of the law. In order to protect those officers and Plaintiffs herein, the court must step in to protect their interests immediately.

30. Additionally, the legislature would not have passed HB 85 without the unconstitutional provisions, and said provisions are essential to the efficacy of the law and therefore not severable.

Wherefore, Plaintiffs request this Court:

1. Declare HB 85 as enacted to be unconstitutional for the following reasons:
 - a. HB 85 contains multiple subjects, in violation of Article III, Section 23 of the Missouri Constitution;
 - b. The multiple subjects contained in HB 85 are not clearly expressed in its title, in violation of Article III, Section 23 of the Missouri Constitution;
 - c. HB 85 was amended in such a way as changed its original purpose, in violation of Article III, Section 21 of the Missouri Constitution;

2. Declare HB 85 and Section 1.410 RSMo to be an unconstitutional Special Law that grants special privileges to gun owners to be free from federal laws regarding firearms without substantial justification in violation of Missouri Constitution Article III Sec. 40(28).
3. Declare HB 85 and Section 1.410 to be unconstitutional, in violation of charter county and city provisions regarding employment, hiring and prescribing the duties of law enforcement as granted to Plaintiffs under Mo. Const. Art VI, Sections 18(b), 18(e), 22 31.
4. Declare HB 85 and Section 1.410 unconstitutional in violation of the Supremacy Clause of Art. VI of the US constitution, and separation of powers set forth in Mo. Const. Art. II, sec.1.
5. Grant temporary, preliminary, and permanent injunctive relief preventing the implementation, enforcement or application of the unconstitutional laws.
6. Award Plaintiffs their attorney fees and costs herein.

And for any further relief the Court deems just and proper.

Respectfully Submitted,

BETH ORWICK
COUNTY COUNSELOR

By: /s/Heidi L. Leopold
Heidi L. Leopold #40473
Associate County Counselor
Office of the St. Louis County Counselor
41 S. Central Avenue, Ninth Floor
Clayton, MO. 63105
(314)615-7042;(314)615-3732 fax
hleopold@stlouiscountymo.gov
Attorneys for Plaintiff St. Louis County

**MATT MOAK
CITY COUNSELOR**

By: /s/Robert H. Dierker

Robert H. Dierker #23671

Associate City Counselor

314 City Hall

1200 Market Street

St. Louis, MO. 63103

dierker@stloui-mo.gov

(314)622-3361;(314)622-4956 fax

Attorneys for Plaintiff City of St. Louis