

**IN THE
SUPREME COURT OF MISSOURI**

Case No. SC99290

CITY OF ST. LOUIS, et al.,

Appellants,

v.

STATE OF MISSOURI, et al.,

Respondents.

Appeal from the Circuit Court, 19th Circuit
Hon. Daniel R. Green, Circuit Judge

BRIEF OF AMICUS CURIAE MISSOURI COALITION AGAINST DOMESTIC AND
SEXUAL VIOLENCE IN SUPPORT OF APPELLANTS

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JURISDICTIONAL STATEMENT

Amicus adopts the jurisdictional statement as set forth in Appellants' brief.

INTEREST OF AMICUS CURIAE

The Missouri Coalition Against Domestic and Sexual Violence (“MOCADSV”) is a non-profit membership organization founded in 1981 comprising 124 community-based domestic violence agencies and more than 20,000 advocates and volunteers throughout Missouri. MOCADSV advocates in the Missouri General Assembly for stronger protections for domestic violence survivors and for increased funding for services and improved systems responses. MOCADSV is the state’s sole provider of domestic and sexual violence technical assistance and education. MOCADSV has previously submitted an amicus brief to this Court to advocate for sexual violence survivors in *John Doe 122 v. Marianist Province of the United States*, No. SC98307 (Mo. banc Feb. 10, 2020). MOCADSV has an interest in this case to ensure that domestic violence survivors continue to be protected by federal law against gun violence and the threat of gun violence inflicted by abusers. Those protections are effectively nullified by the Second Amendment Preservation Act, the law challenged by Appellants in this litigation.

AUTHORITY TO FILE

MOCADSV has received consent from all parties to file this amicus brief in accordance with Rule 84.05(f)(2) within the time allowed for the filing of Appellants' brief.

STATEMENT OF FACTS

Amicus adopts the statement of facts as set forth in Appellants' brief.

INTRODUCTION AND SUMMARY OF ARGUMENT

Domestic violence is all too common across the country and in Missouri. But it is the presence of guns in the hands of abusers that frequently turns domestic violence lethal. It is imperative that abusers' access to firearms be limited to protect domestic violence survivors.

Federal law recognizes the necessity of protecting domestic violence victims from threats and acts of firearms violence. The federal Gun Control Act prohibits firearms purchase and possession by any domestic abuser who is currently subject to a domestic violence order of protection or who has been convicted of a misdemeanor crime of domestic violence. Missouri law does not include these same protections. Nevertheless, Missouri domestic violence survivors have benefitted from those federal law protections through the collaboration of state and local law enforcement authorities with their federal counterparts in the investigation and prosecution of domestic abusers who acquire, possess, and use firearms unlawfully under federal law.

But Missouri's Second Amendment Preservation Act ("SAPA"), H.B. 85, 101st Gen. Assemb., 1st Reg. Sess. (Mo. 2021) (codified at §§ 1.140–1.485, RSMo), has chilled that cooperation with federal law enforcement, putting domestic violence survivors at increased risk of becoming victims of armed abusers. SAPA not only purports to nullify the federal restrictions on abusers' access to firearms, but also *penalizes* local law enforcement that assists in the investigation and prosecution of firearms crimes committed by domestic abusers. SAPA is having its intended effect: to avoid incurring costly litigation

and hefty fines imposed by SAPA, Missouri law enforcement agencies are avoiding collaboration with federal authorities on firearm cases.

Domestic violence abusers have and will continue to seek access to firearms, but their use of firearms to perpetrate domestic violence has been deterred and punished through the Gun Control Act's critical firearms access prohibitions. SAPA dangerously transforms these domestic abusers into "law-abiding citizens" and effectively places them outside the reach of any consequences for possessing firearms in violation of federal law.

MOCADSV submits this amicus brief to provide this Court with data and facts showing how domestic violence is made lethal by firearms access and explain how SAPA makes it easier for abusers to get and keep firearms and threatens to worsen Missouri's deadly domestic violence crisis. This context demonstrates that it is imperative that the courts decide SAPA's constitutionality through Appellants' suit. Appellants should not have to wait for a multiplicity of suits to decide whether SAPA can be enforced against them. Appellants need a timely decision as to whether SAPA is unconstitutional and confirmation that it cannot be used to penalize local law enforcement authorities who work with federal authorities to protect domestic violence survivors from harm. If the courts wait to adjudicate individual cases, Appellants will be unable to cooperate with federal law enforcement to disarm domestic abusers.

In short, the severe, concrete, and deadly implications for domestic violence survivors of SAPA remaining on the books weigh strongly in favor of deciding Appellants' pending request for declaratory relief. Furthermore, MOCADSV supports Appellants' request for this Court to declare SAPA unconstitutional for the reasons stated in

Appellants' brief, including on the basis that SAPA violates the Supremacy Clause of the U.S. Constitution by nullifying federal firearms laws such as the Gun Control Act's protections of domestic abuser survivors.

ARGUMENT

As discussed below, well-established social science research shows that the presence of firearms turns domestic violence situations deadly. While federal law restricts abusers' access to firearms, SAPA effectively nullifies these protections, leaving victims of domestic violence vulnerable to an increased risk of being threatened, shot at, or killed in their homes, and an increased risk of their children facing the same dangers. Appellants' request to invalidate SAPA should be heard and SAPA should be declared unconstitutional so that Missouri's domestic violence crisis does not get any worse.

I. Domestic violence becomes deadly when abusers have access to firearms.

Non-lethal domestic violence is far more likely to become lethal when an abuser has access to a firearm. The statistics are staggering: a domestic abuser's access to a gun makes it five times more likely that his female partner will be killed.¹ And SAPA's chilling effect on state and local law enforcement and its widening of Missouri's dangerous domestic violence loophole will enable perpetrators of domestic violence in Missouri to

¹ Everytown for Gun Safety Support Fund, *Guns and Violence Against Women: America's Uniquely Lethal Intimate Partner Violence Problem* (updated Apr. 27, 2021), <https://everytownresearch.org/report/guns-and-violence-against-women-americas-uniquely-lethal-intimate-partner-violence-problem/> (citing Jacquelyn C. Campbell, et al., *Risk Factors for Femicide in Abusive Relationships: Results From a Multisite Case Control Study*, 93 Am. J. Pub. Health 1089 (2003)).

access, possess, and use firearms with a sense of impunity. This will worsen Missouri's already deadly domestic violence problem.

Across America, 4.5 million women have reported being threatened with a gun by an intimate partner, and almost 1 million women have survived being shot or shot at by an intimate partner.² An average of 57 women are shot and killed by an intimate partner every month in the United States.³ Tragically, the rate at which women are killed by violent partners with a firearm has accelerated in recent years, despite a reduction in intimate partner homicides of women involving other weapons.⁴

Firearm ownership and access are specifically associated with an increased risk of fatalities in a domestic violence situation. The states with the highest rate of firearm ownership have a 65% higher rate of domestic violence homicides than states with the lowest rates of gun ownership.⁵ In contrast, in states that encourage or require abusers under a domestic violence restraining order to relinquish their firearms or otherwise restrict

² *Id.* (citing Susan B. Sorensen & Rebecca A. Schut, *Nonfatal Gun Use in Intimate Partner Violence: A Systematic Review of the Literature*, 19 *Trauma, Violence & Abuse* 431 (2018)).

³ *Id.* (citing Jacob Kaplan, *Jacob Kaplan's Concatenated Files: Uniform Crime Reporting (UCR) Program Data: Supplementary Homicide Reports, 1976-2019*, Ann Arbor, MI: Inter-university Consortium for Political and Social Research (2021), <https://doi.org/10.3886/E100699V10>).

⁴ *Id.* (citing Emma J. Fridel & James A. Fox, *Gender Differences in Patterns and Trends in U.S. Homicide, 1976–2017*, 6 *Violence & Gender* 27 (2019)).

⁵ *Id.* (citing Aaron J. Kivisto, et al., *Firearm Ownership and Domestic Versus Nondomestic Homicide in the U.S.*, 57 *Am. J. Preventative Med.* 311 (2019)).

access to guns, the domestic violence firearm homicide rate is 14–16% lower.⁶ At bottom, state laws restricting prior domestic violence perpetrators from accessing firearms “save lives.”⁷

Domestic violence is prevalent in Missouri. There were 45,548 incidents of domestic violence reported to Missouri law enforcement in 2018, and 41.8% of Missouri women experience physical violence, sexual violence, or stalking by an intimate partner in their lifetimes.⁸ As of 2015, 13,610 orders of protection issued by Missouri courts had been transmitted to the federal database collecting domestic violence protection orders and 5,436 of those Missouri court orders were flagged to prohibit the respondent from possessing and purchasing firearms under federal law.⁹ Further, domestic violence victims are at particular risk of gun homicide in Missouri. Sixty-four women were killed by men in Missouri in 2019, which marked Missouri as having the seventh highest rate in the nation of homicides

⁶ *Id.* (citing April M. Zeoli, et al., *Analysis of the Strength of Legal Firearms Restrictions for Perpetrators of Domestic Violence and Their Associations with Intimate Partner Homicide*, 187 *Am. J. of Epidemiology* 2365 (2018); Carolina Diez, et al., *State Intimate Partner Violence-Related Firearm Laws and Intimate Partner Homicide Rates in the United States, 1991 to 2015*, 167 *Annals. Internal Med.* 536 (2017)).

⁷ *Id.*

⁸ National Coalition Against Domestic Violence, *Fact Sheet: Domestic Violence in Missouri* (2020), <https://bit.ly/3q3iGkp>.

⁹ U.S. Government Accountability Office, *Gun Control: Analyzing Available Data Could Help Improve Background Checks Involving Domestic Violence Records*, 46 (July 2016), <https://www.gao.gov/assets/gao-16-483.pdf>.

committed by men against women.¹⁰ Out of 57 Missouri homicides where the type of deadly force used was identified, 81% of female victims were killed with guns.¹¹ Overwhelmingly, these female homicide victims were murdered by someone they knew.¹² Data collected in Kansas City from individuals who self-identified as experiencing domestic violence showed that 42.5% had been threatened with a weapon by their abuser or had a weapon used against them, and that 58% of abusers had a gun or could easily access a gun.¹³

Across the country, the use of firearms in domestic violence situations increases the risk that the abuse will result in multiple fatalities.¹⁴ When a male perpetrator uses a gun in a domestic homicide, he is nearly twice as likely to kill at least one additional victim.¹⁵ Additional fatalities often include children or the perpetrator themselves.¹⁶ When a gun is

¹⁰ Violence Policy Center, *When Men Murder Women: An Analysis of 2019 Homicide Data*, 4 (2021), <https://www.vpc.org/studies/wmmw2021.pdf>.

¹¹ *Id.* at 18.

¹² *Id.*

¹³ Kimberly A. Randell, et al., *Risk of Intimate Partner Homicide Among Caregivers in an Urban Children's Hospital*, 173 *JAMA Pediatrics* 97 (2018).

¹⁴ Aaron K. Kivisto & Megan Porter, *Firearm Use Increases Risk of Multiple Victims in Domestic Homicides*, 48 *J. Am. Acad. Psychiatry and L.* 26 (2020), <https://pubmed.ncbi.nlm.nih.gov/31753965/>.

¹⁵ *Id.* at 26, 30.

¹⁶ *Id.* at 27.

used in a fatal domestic violence incident, the risk that suicide follows increases.¹⁷ In murder-suicides with more than one homicide victim, “[t]he presence of a gun allows the offender to quickly and easily kill a greater number of victims.”¹⁸ Furthermore, the majority of mass shootings (53%) between 2009 and 2020 were domestic-violence related, and 72% of children and teens killed in mass shootings during this same time frame “died in an incident connected to intimate partner or family violence.”¹⁹

II. Federal law protects domestic violence survivors by limiting abusers’ access to firearms, but SAPA nullifies these protections.

Federal law protects domestic violence survivors by restricting abusers’ access to firearms. Because Missouri law does not provide commensurate protections, SAPA works to undermine those federal restrictions. SAPA re-categorizes abusers as “law-abiding citizens,” restores their firearms privileges, and shields them from being brought to justice for unlawfully possessing firearms by barring state and local officials from collaborating with federal authorities on investigations and prosecutions.

Federal laws restricting firearms access to certain persons deemed to pose a danger to others are longstanding. The Federal Firearms Act of 1938 prohibited any person who

¹⁷ April M. Zeoli, *Multiple Victim Homicides, Mass Murders, and Homicide-Suicides as Domestic Violence Events*, Battered Women’s Justice Project, 4 (2018), <https://bit.ly/3memrm3> (“Two studies found that when intimate partner homicides were committed by men with guns, suicide followed in 46% to 56% of cases, but when it was committed by men without guns, suicide followed in only 7% to 13% of cases.”).

¹⁸ Violence Policy Center, *American Roulette: Murder-Suicide in the United States*, 7 (2020), <https://vpc.org/studies/amroul2020.pdf>.

¹⁹ Everytown for Gun Safety Support Fund, *Twelve Years of Mass Shootings in the United States* (updated June 4, 2021), <https://bit.ly/3E7zCvh>.

had been convicted of a “crime of violence” or who was a “fugitive from justice” from possessing a firearm or ammunition. Pub. L. No. 75-785, § 2(f), 52 Stat. 1250, 1251 (1938). The Gun Control Act of 1968 expanded the classes of prohibited individuals to include felons, fugitives, certain drug users, and any persons who had been “adjudicated as a mental defective” or “committed to a mental institution.” Pub. L. 90-618, 82 Stat. 1213 (1968). Through the Violence Against Women Act of 1994, Congress established a prohibition on the purchase and possession of firearms by any individual subject to a qualifying domestic violence restraining order. Pub. L. No 103-322, § 110401, 108 Stat. 1796 (1994). In 1996, the Lautenberg Amendment added a prohibition on firearms purchase and possession by an individual convicted of a misdemeanor crime of domestic violence. Omnibus Consolidated Appropriations Act of 1997, Pub. L. No. 104-208, § 658, 110 Stat. 3009 (1996).

Missouri statutes limit the prohibition of firearms possession to four categories of individuals: felons, fugitives from justice, certain drug users, and persons “currently adjudged mentally incompetent.” § 571.070.1, RSMo. But Missouri law does not prohibit firearms possession by individuals who have been convicted of misdemeanor crimes of domestic violence. Nor does Missouri law automatically prohibit firearms possession by respondents subject to domestic violence orders of protection. Orders of protection “may include such terms as the court reasonably deems necessary to ensure the petitioner’s safety,” § 455.050.1, RSMo, but a firearms possession restriction is not required.

SAPA effectively nullifies aspects of federal firearms laws that exceed Missouri law—including by purporting to restore firearms privileges for individuals convicted of

misdemeanor crimes of domestic violence and those subject to domestic violence orders of protection. SAPA deems any act which prohibits the “possession, ownership, use, or transfer of a firearm, firearm accessory, or ammunition” by so-called “law-abiding citizens” to be an “infringement[] on the people’s right to keep and bear arms,” §§ 1.420, 1.420(4), RSMo. A “law-abiding citizen,” under SAPA, is “a person who is not otherwise precluded under state law from possessing a firearm” § 1.480.1, RSMo. Because domestic abusers are not “precluded under state law from possessing a firearm,” they are therefore “law-abiding citizens” under SAPA. The federal protections that prohibit firearms possession by domestic abusers, SAPA commands, “shall not be recognized by this state, shall be specifically rejected by this state, and shall not be enforced by this state.” § 1.430, RSMo.

Not only does SAPA re-categorize domestic abusers as “law-abiding citizens” beyond the reach of federal firearms laws, SAPA also works to prevent law enforcement from taking any actions to disarm domestic abusers. SAPA prohibits anyone, including state and local officials, from enforcing a federal law that exceeds state law possession restrictions. § 1.450, RSMo. A locality or law enforcement agency employing an officer who violates that enforcement prohibition is liable for a civil penalty of \$50,000 for each violation. § 1.460.1, RSMo.

SAPA may even prohibit state and local law enforcement from cooperating with federal authorities on the prosecution of firearms possession by domestic abusers who are convicted felons. SAPA provides a narrow carve-out from civil penalties when localities provide “material aid to federal prosecution” for “weapons violations” if those violations

are “substantially similar” to Missouri crimes. § 1.480.4, RSMo. But this carve-out applies only “so long as such weapons violations are merely ancillary to such prosecution,” *id.*, and therefore does not appear to allow localities to refer firearm-possessing felons for federal prosecution—including felons who are perpetrators of domestic violence.

III. SAPA chills the cooperation of state and local law enforcement agencies with federal authorities and therefore obstructs federal law protections for domestic violence survivors.

SAPA’s reclassification of domestic abusers as “law-abiding citizens” has real consequences for the protection of domestic violence survivors. Before SAPA, Missouri law enforcement agencies worked to disarm abusers by referring them to federal authorities.²⁰ Quinton Lucas, the Mayor of Kansas City, has termed the federal protections a “saving grace” that ameliorates the “domestic violence loophole in Missouri law.”²¹

This cooperation with federal authorities regularly yields prosecutions of dangerous abusers. For example, a man from St. Louis County is currently being detained by federal authorities on a charge of unlawful possession of a firearm while subject to a domestic violence restraining order after extending his abusive and threatening behavior towards his

²⁰ Jennifer Mascia, *Missouri’s ‘Second Amendment Sanctuary’ Law Could Complicate Police Efforts to Solve Gun Crimes*, TheTrace.org, (Sept. 20, 2021), <https://bit.ly/31UQp7P>.

²¹ Norah O’Donnell, *Missouri’s Second Amendment Preservation Act outlaws local enforcement of federal gun laws*, CBSNews: 60 Minutes (Nov. 7, 2021, 6:59 PM), <https://cbsn.ws/31TshT6>.

wife into threats to state court judges.²² This past August, a Kansas City man pleaded guilty to a federal charge for possessing a firearm after two previous convictions for misdemeanor crimes of domestic violence, the result of a prosecution originating from an arrest by the Kansas City Police Department for the man's involvement in a street fight and his possession of a pistol that had recently been trafficked from Georgia.²³ This past July, a St. Louis man pleaded guilty to a federal felon-in-possession charge following the St. Louis Metropolitan Police Department's investigation of a report by the man's ex-girlfriend that he had threatened her with a rifle as two accomplices assaulted her.²⁴ The Victim's Advocate for the U.S. Attorney's Office for the Eastern District of Missouri has explained that federal firearms possession charges "are often viewed as victimless crimes, but this is not always the case.[] Oftentimes, these cases come to fruition as a result of law enforcement responding to a domestic violence call and discovering the abuser is a previously convicted felon who is in possession of a firearm."²⁵

²² Memorandum and Order, *U.S. v. Reuter*, No. 21-CR-00425 (E.D. Mo. Aug. 20, 2021), <https://storage.courtlistener.com/recap/gov.uscourts.moed.189857/gov.uscourts.moed.189857.39.0.pdf>.

²³ Plea Agreement, *U.S. v. Washington*, No. 20-CR-00011 (W.D. Mo. Aug. 31, 2021), <https://storage.courtlistener.com/recap/gov.uscourts.mowd.149918/gov.uscourts.mowd.149918.47.0.pdf>.

²⁴ Plea Agreement, *U.S. v. Collier*, No. 20-CR-00774 (E.D. Mo. July 8, 2021), <https://storage.courtlistener.com/recap/gov.uscourts.moed.185048/gov.uscourts.moed.185048.41.0.pdf>.

²⁵ Department of Justice U.S. Attorney's Office Eastern District of Missouri, *Press Release: Judge sentences Jefferson County man to statutory maximum of 10 years for being a felon in possession of a firearm* (Jan. 27, 2021), <https://bit.ly/3s6GV3V>.

SAPA threatens to eliminate or at the very least significantly undermine this critical collaborative effort between state, local, and federal law enforcement to protect domestic violence victims. This is not just speculation. According to public reports, authorities throughout Missouri are already curtailing their collaboration with federal law enforcement because of SAPA. The police chief of Poplar Bluff, Danny Whiteley, publicly stated that he is no longer working with federal prosecutors on gun cases.²⁶ He pointed to one recent incident involving a man who shot at his ex-girlfriend, an incident that Chief Whiteley said he would not refer for federal prosecution because of the threat of a \$50,000 fine.²⁷ Another police chief advised his officers that if a federal agency requests anything from them, that request “must go all the way up the chain of command.”²⁸ The Missouri State Highway Patrol has suspended its participation on joint state-federal task forces concerning weapons violations, including one with the Bureau of Alcohol, Tobacco, Firearms and Explosives.²⁹ Similarly, the Columbia Police Chief has said that SAPA has changed the way his department interacts with ATF, while the Columbia Mayor has said “[t]here’s very little

²⁶ O’Donnell, *supra* note 21.

²⁷ *Id.*

²⁸ Kathy Sweeney, *Southeast Mo. law enforcement leaders say Second Amendment Preservation Act misses the mark*, KFVS12.com (Aug. 31, 2021, 8:05 PM), <https://bit.ly/31VwRjL>.

²⁹ Leila Mitchell, *Law Enforcement in Missouri is unsure of how the Second Amendment Preservation Act will affect their department*, ABC17News.com (July 7, 2021, 6:15 PM), <https://bit.ly/3pTvMAA>.

cooperation they can have with the federal government in terms of enforcing federal gun crimes here in the State of Missouri.”³⁰

Missouri’s lethal domestic violence problem could get worse. It is imperative that law enforcement authorities across Missouri have all of the available tools at their disposal to prevent domestic abusers from obtaining and using firearms against their victims. Instead, SAPA makes it more likely that abusers will obtain and possess firearms free of any law enforcement consequences. This likelihood, coupled with the research showing that access to firearms makes domestic violence more deadly, means that SAPA makes domestic violence more deadly in Missouri.

CONCLUSION

Missouri has one of the country’s worst rates of lethal domestic violence. The Second Amendment Preservation Act can only deepen this crisis. Federal law offers some protection to domestic violence survivors by restricting their abusers’ access to firearms, but SAPA effectively nullifies that protection. In seeking to invalidate SAPA, Appellants are asking this Court for guidance on whether local authorities may continue to take critical life-saving steps to disarm domestic abusers. Their suit should be heard and SAPA should be declared unconstitutional. The safety and the lives of domestic violence survivors are at stake.

³⁰ Mark Slavitt, *Missouri law on federal gun rules creates obstacles for Columbia Police Chief*, KRCGTV.com (Dec. 2, 2021), <https://bit.ly/3sdyPr>.

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CERTIFICATE OF COMPLIANCE

I hereby certify that the attached brief complies with the limitations contained in Supreme Court Rule 84.06(b) and contains approximately 4,248 words, as determined by Microsoft Office Word. The brief also complies with Supreme Court Rule 55.03. The font is Times New Roman 13-point type.

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and Sexual Violence*

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of December 2021, I electronically filed the foregoing with the Clerk of the Court for the Supreme Court of Missouri using the Courts electronic filing system. The undersigned also certifies that the following participants in this case are registered electronic filing system users and that service of the foregoing will be accomplished by the Court's electronic filing system:

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