

## **Nullification / SB 600:**

### **NEGATIVE CONSEQUENCES**

On May 6, 2020, the Missouri House of Representatives passed an amended version of SB 600. As amended by the House, SB 600 purports to nullify an array of federal public safety laws, prevent Missouri state and local law enforcement from assisting in the enforcement of these laws, and penalize police, prosecutors, and other Missouri government employees who either participate in the enforcement of federal public safety laws or draw on federal resources to investigate and prosecute violations of Missouri's own public safety laws. As amended, portions of SB 600 repeat theories of state power to nullify federal law that are long-discredited and would be struck down as unconstitutional. Even portions of SB 600 that might survive a constitutional challenge would make Missouri law enforcement subject to harassing lawsuits. SB 600 would frustrate law enforcement's ability to enforce public safety laws within the state. Among other things, the House's amendments to SB 600 would:

#### **Violate the U.S. Constitution by Declaring Federal Law Unenforceable in Missouri**

- Section 1.430 purports to declare an array of federal public safety laws, regulations, and judicial orders "invalid...null, void, and of no effect" in Missouri. This provision is plainly unconstitutional, would subject the state of Missouri to legal challenges, and is all but certain to be struck down by courts. The Constitution and the laws of the United States "shall be the supreme Law of the Land," U.S. Const. Art. VI, and courts since at least the segregation era have recognized that states do not have authority to nullify federal law within their borders.

#### **Violate the U.S. Constitution by Subjecting Federal Law Enforcement to Harassing Litigation by Arrested Individuals**

- Section 1.460 subjects federal law enforcement and prosecutors to civil lawsuits by arrested individuals for attempting to enforce federal public safety laws. This provision is likewise almost certain to be struck down as unconstitutional for its effect in frustrating federal law enforcement through legal harassment. It would also send a deeply troubling policy message—even if struck down—for Missouri to, *e.g.* allow and encourage firearms traffickers and armed drug gangs to sue federal law enforcement officers who attempt to bring them to justice and keep Missourians safe.

#### **Send a Dangerous Message Encouraging Criminals to Violate Federal Laws in Missouri**

- Even more dangerous is the message that SB 600 would send—wrongly—to criminals and others with dangerous histories that they can carry firearms in violation of federal law within Missouri. Section 1.480 defines "law abiding citizen" as someone who is not "precluded under state law from possessing a firearm." But because of differences between federal and state law, this would effectively declare groups like people with misdemeanor convictions for domestic violence and stalkers subject to restraining order to be "law abiding citizens" who can carry firearms in Missouri notwithstanding federal prohibition.

- Missouri law does not prohibit a number of categories of firearms possession that federal law does, including one who:
  - 1) Is under indictment for a crime punishable by imprisonment for more than one year
  - 2) Is underage;
  - 3) Has been dishonorably discharged from the military;
  - 4) Has renounced his or her U.S. citizenship;
  - 5) Is subject to a court order restraining him or her from harassing, stalking or threatening an intimate partner, his or her child or a child of a partner, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; or
  - 6) Has been convicted of a misdemeanor offense of domestic violence.
- While Missouri does not have the legal authority to declare these groups exempt from federal prosecution, this provision would nonetheless send them a dangerous and legally unsound message, encouraging criminals and others with dangerous histories to ignore federal public safety laws. This could seriously jeopardize public safety in Missouri.

### **Penalize Missouri Police and Prosecutors for Participating in the Enforcement of Federal Public Safety Laws**

- Section 1.460 would empower arrested individuals to sue Missouri prosecutors and police who refer them to the United States Attorney's for federal prosecution. For example, a highway patrol officer who recovers a fully automatic machine gun from a drug dealer or gang member during a traffic stop could be stripped of immunity and forced to pay money damages if he refers the case for federal prosecution. The same is true if the officer arrests a Missouri citizen trafficking firearms to illegal aliens—an act prohibited under federal law but not addressed in Missouri's statutes. In both cases, referral for federal prosecution would likely constitute an act “under color of any state...law” that the Missouri police or prosecutor “know[s]” will result in federal prosecution, under Section 1.460, subjecting them to lawsuits by the individuals they have arrested. Section 1.460 would also revoke police officers' immunity and award attorneys' fees for successful lawsuits against them, giving criminals additional incentive to sue.
- A federal referral could also cost Missouri police officers and prosecutors their jobs, and make them permanently ineligible for employment in law enforcement in Missouri. This is because federal referral would also likely constitute “material aid” to federal “infringements” as defined by Section 1.470, triggering these additional penalties. Because “any person” within the jurisdiction can use Section 1.470 to impose these penalties, armed criminals would likely use this provision to harass and retaliate against Missouri police and prosecutors.

### **Penalize Missouri Police and Prosecutors for Using Federal Resources to Investigate and Prosecute Violations of Missouri Law**

- Section 1.460 would also prevent Missouri police and prosecutors from drawing on federal resources to investigate and prosecute armed criminals under Missouri law. For example, when a

municipal police department recovers a firearm used in an armed robbery and asks for federal assistance in tracing it, they would appear to “knowingly... violate the provisions of section 1.450.” This is because federal tracing may be considered a prohibited infringement under Section 1.420(2), as it arguably constitutes “registering or tracking of firearms” under federal laws and regulations. As a result, Section 1.460 could both deprive Missouri law enforcement of these powerful tools used to combat armed criminals under state law. It would also subject requesting officers to harassing lawsuits for civil damages, and put them at risk of being permanently banned from working in law enforcement within the state.