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**VIRGINIA:**

**IN THE CIRCUIT COURT FOR THE COUNTY OF LANCASTER**

**JOHN CRUMP,**
**GUN OWNERS OF AMERICA, INC.,**
**GUN OWNERS FOUNDATION,**
**VIRGINIA CITIZENS DEFENSE LEAGUE, and**
**VIRGINIA CITIZENS DEFENSE FOUNDATION,**

**Plaintiffs,**

**v.** **Case No. CL26000201-00**

**COLONEL JEFFREY S. KATZ,**
**In His Official Capacity as**
**Superintendent of the Virginia State Police**
**7700 Midlothian Turnpike**
**North Chesterfield, VA 23235,**

**Defendant.**

**PLAINTIFFS' MEMORANDUM IN SUPPORT OF THEIR MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

COME NOW Plaintiffs John Crump, Gun Owners of America, Inc. ("GOA"), Gun Owners Foundation ("GOF"), Virginia Citizens Defense League ("VCDL"), and Virginia Citizens Defense Foundation ("VCDF"), by counsel, pursuant to Rules 3:26 and 4:15 of the Rules of the Supreme Court of Virginia, and in support of their Motion for Temporary Restraining Order and Preliminary Injunction state the following:

## INTRODUCTION

On May 14, 2026, Virginia Governor Abigail Spanberger signed into law SB749, an unprecedented features-based ban on pejoratively named "assault firearms" and "large capacity ammunition feeding devices." With an imminent effective date of July 1, 2026, SB749 runs the anti-gun gamut, prohibiting the importation, sale, manufacture, purchase, barter, transfer, and,

together with SB727, the public carry of all manner of ubiquitous firearms and firearm magazines. These include defensive pocket pistols, which "are unquestionably in common use today," *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 47 (2022), the AR-15 rifle, "the most popular rifle in the country," *Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, 605 U.S. 280, 297 (2025) (unanimous opinion), and standard-capacity magazines that are owned by the tens – if not hundreds – of millions across the nation. All told, the Challenged Statutes[1] prohibit the acquisition, disposition, possession, and public carry of the most ordinary, common, and overwhelmingly popular tools for self-defense, hunting, sport, and collecting – not to mention the preservation of a free state. Under the Virginia Constitution's independent protection of the right to keep and bear arms, the Challenged Statutes are flatly unconstitutional. *See* Va. Const. art. I, § 13.

Plaintiffs include an individual and four nonprofit organizations dedicated to preserving the enumerated rights of gun owners across the Commonwealth. Plaintiffs are law-abiding, wish to engage in innocuous conduct now criminalized by the Challenged Statutes, and they likewise represent tens of thousands of similarly situated Virginians who will be irreparably harmed absent the immediate entry of injunctive relief. Accordingly, Plaintiffs request this Court's urgent intervention to preserve the status quo and vindicate their Article I, Section 13 rights.

**LEGAL STANDARD**

A court may issue a temporary restraining order if "the equities of a case warrant doing so and adequate notice to opposing parties has been given by the movant...." Va. Sup. Ct. R. 3:26(b). Likewise, a court may issue a preliminary injunction "if it first determines that the movant will more likely than not suffer irreparable harm without the preliminary injunction." Va. Sup. Ct. R.

[1] Plaintiffs challenge Va. Code §§ 18.2-287.4:1, 18.2-308.09(1), 18.2-308.1:9, 18.2-308.2:1, 18.2-308.2:2(A), 18.2-308.2:3, 18.2-308.2:2(F)(4)(1)-(7), 18.2-308.2:5(E), 18.2-287.4, 18.2-309.1, and 19.2-386.28.

3:26(c). Once "a court finds that the threshold has been met, the court must determine whether three factors support the issuance of the injunction: (1) 'the movant has asserted a legally viable claim based on credible facts … [that will] more likely than not succeed on the merits'; (2) 'the balance of hardships … favors granting the preliminary injunction'; and (3) 'the public interest, if any, supports the issuance of a preliminary injunction.'" *Cartograf USA, Inc. v. Comerica Bank*, 85 Va. App. 1, 19 (2025) (quoting Va. Sup. Ct. R. 3:26(d)). To that end, "[a]n application for a temporary injunction may be supported … by an affidavit or verified pleading." Va. Code § 8.01-628. However, if a court "cannot determine at the time that the movant will likely succeed on the merits," the court still may issue a preliminary injunction "upon a clear showing that the underlying claim has substantial merit" and "the likely irreparable harm to the movant is severe and any corresponding harm to the nonmovant is slight...." Va. Sup. Ct. R. 3:26(e).

## ARGUMENT

### I. PLAINTIFFS HAVE STANDING.

Plaintiffs wish to import, sell, manufacture, purchase, acquire, transfer, and publicly carry "assault firearms" and "large capacity ammunition feeding devices," free from criminal liability under the Challenged Statutes. To that end, Plaintiff John Crump and the members and supporters of Plaintiffs GOA, GOF, VCDL, and VCDF all wish to acquire "assault firearms" and "large capacity ammunition feeding devices" after July 1, 2026 including, and as is relevant here, from Chandler's Firearms, a licensed dealer located within this jurisdiction, and at other licensed dealers and retailers, and from others within and without the Commonwealth, but cannot due to the Challenged Statutes. *See* Compl. Ex. C ("Crump Aff.") ¶11-14; Compl. Ex. D ("Pratt Aff.") ¶24; Compl. Ex. E ("Van Cleave Aff.") ¶21; Compl. Ex. F ("Chandler Dec.") ¶¶3-4.

For instance, Plaintiff Crump has a number of firearms and magazines he wishes to acquire within the next several months (but after July 1, 2026), including: a KelTec PR-5.7 pistol; an AR-15-style Daniel Defense DDM4 V7 rifle chambered in 5.56 NATO; Magpul PMAG 20, PMAG 30, and PMAG D-60 magazines with 20-, 30-, and 60-round capacities, respectively; Glock 17 magazines with 17-round capacities; and an AR-15-style Palmetto State Armory PA-15 pistol chambered in 5.56 NATO. Crump Aff. ¶¶15-19. However, by virtue of their features, each of these firearms and magazines qualifies as a prohibited "assault firearm" or "large capacity ammunition feeding device" under Va. Code §§ 18.2-308.2:2(F)(4) and 18.2-309.1. *See id.*

Likewise, Plaintiff Crump wishes to soon acquire (after July 1, 2026) a Benelli M4 Tactical 12-gauge shotgun; a Derya DY12 magazine-fed 12-gauge shotgun; and a Taurus Judge Public Defender shotshell-firing revolver. Crump Aff. ¶¶20-21, 23. However, by virtue of their features, each appears to qualify as a prohibited "assault firearm" under Va. Code §§ 18.2-308.2:2(F)(4). *See id.* The same is true for Plaintiff Crump's planned assembly of an AR-15-style rifle into a prohibited configuration. *See id.* ¶25.

Plaintiff Crump also wishes to acquire a Lima Six belt-fed upper receiver for assembly on an AR-15-style lower receiver, but it will not ship until after July 1, 2026, when this rifle will qualify as a prohibited "assault firearm" under Va. Code § 18.2-308.2:2(F)(4). Crump Aff. ¶24.

Finally, Plaintiff Crump wishes to sell an AR-15-style 5.56 NATO rifle, along with five 30-round magazines for it, to a close friend soon after July 1, 2026, for a total price of $600. Crump Aff. ¶29. Plaintiff Crump also wishes to give a similar AR-15-style 5.56 NATO rifle, along with five 30-round magazines for it, to his nephew soon after July 1, 2026. *Id.* ¶30. However, by virtue of the firearms' and magazines' features, each is a prohibited "assault firearm" or "large capacity

ammunition feeding device" under Va. Code §§ 18.2-308.2:2(F)(4) and 18.2-309.1, and no statutory exception applies to either transfer. *See id.* ¶¶29-30.

For each of these items in the above paragraphs, Plaintiff Crump would acquire, purchase, import, manufacture, assemble, sell, or transfer the item but for his fear of Defendant's enforcement of the Challenged Statutes against him. Crump Aff. ¶¶15-19, 20-21, 23-25, 29-30.

In addition to Plaintiff Crump, Plaintiffs GOA, GOF, VCDL, and VCDF (the "Organizational Plaintiffs") together have tens of thousands of members and supporters across Virginia, many of whom also wish to import, sell, manufacture, purchase, acquire, transfer, and publicly carry prohibited "assault firearms" and "large capacity ammunition feeding devices" after July 1, 2026. Pratt Aff. ¶¶11, 15; Van Cleave Aff. ¶¶6, 14. The Organizational Plaintiffs assert the rights and interests of their members and supporters in a representational capacity. Indeed, these members and supporters desire and overwhelmingly support the Organizational Plaintiffs' involvement in this litigation to protect their right to keep and bear arms. Pratt Aff. ¶¶21-22; Van Cleave Aff. ¶¶18-19. Moreover, protection of the rights and interests advanced in this litigation is germane to the Organizational Plaintiffs' respective missions, which include the preservation and protection of the right to keep and bear arms under federal and state constitutions. The Organizational Plaintiffs routinely litigate cases throughout the country on behalf of their members and supporters, and they are capable of fully and faithfully representing those persons' interests without participation by each of the individuals. Pratt Aff. ¶22; Van Cleave Aff. ¶19.

Finally, the Organizational Plaintiffs have direct, organizational standing, as they are headquartered in Virginia and seek to acquire firearms and magazines banned by the Challenged Statutes for various organizational purposes, including fundraising, training, and education, but will be prohibited from doing so absent immediate relief. Pratt Aff. ¶23; Van Cleave Aff. ¶20.

Of course, Plaintiffs need not actually violate the law in order to seek relief from the Challenged Statutes. Nor must Plaintiffs await an actual arrest or prosecution to challenge the Challenged Statutes. Rather, a plaintiff can "bring a pre-enforcement suit when he 'has alleged an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute, and there exists a credible threat of prosecution thereunder.'" *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 160 (2014). And courts presume a credible threat of prosecution absent compelling evidence to the contrary. *See, e.g.*, *Antonyuk v. James*, 120 F.4th 941, 1006 (2d Cir. 2024) ("[W]e 'presume … intent [to enforce the law] in the absence of a disavowal by the government or another reason to conclude that no such intent existed.'"); *Bryant v. Woodall*, 1 F.4th 280, 286 (4th Cir. 2021) ("[L]aws that are 'recent and not moribund' typically do present a credible threat."); *Harrell v. Fla. Bar*, 608 F.3d 1241, 1257 (11th Cir. 2010) ("If a challenged law or rule was recently enacted, or if the enforcing authority is defending the challenged law or rule in court, an intent to enforce the rule may be inferred.").

Thus, "[w]hen an individual is subject to such a threat, an actual arrest, prosecution, or other enforcement action is not a prerequisite to challenging the law." *Susan B. Anthony List*, 573 U.S. at 158; *see also MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 128-29 (2007) ("where threatened action by government is concerned, we do not require a plaintiff to expose himself to liability before bringing suit"); *Steffel v. Thompson*, 415 U.S. 452, 459 (1974) (same); *Black v. Commonwealth*, 262 Va. 764, 777-78 (2001) ("Threat of prosecution under a criminal statute 'tends to chill the exercise of [constitutional] rights.'"), *aff'd in part*, *Virginia v. Black*, 538 U.S. 343 (2003). Accordingly, because (i) Plaintiffs' course of conduct is prohibited by the Challenged Statutes, (ii) Defendant is tasked with enforcing the Challenged Statutes, and (iii) Defendant has not disclaimed enforcement of the same, Plaintiffs have standing.

## II. INJUNCTIVE RELIEF IS NECESSARY.

### A. Plaintiffs Will Suffer Imminent Irreparable Harm Absent Injunctive Relief.

Injunctive relief is appropriate where "a party has shown that party would suffer irreparable harm without the injunction, and that the party has no adequate remedy at law." *May v. R.A. Yancey Lumber Corp.*, 297 Va. 1, 17-18 (2019). Virginia courts have explained that, "[u]nder well-established equitable principles, the party seeking a temporary injunction ordinarily will not suffer irreparable injury if damages provide full compensation." *Dillon v. Northam*, 105 Va. Cir. 402, 411 (Norfolk 2020). Of course, a remedy at law is clearly insufficient to redress the infringement of enumerated constitutional rights, which cannot be assigned a monetary value. Virginia courts have made clear that even a "temporary violation of a constitutional right itself is enough to establish irreparable harm." *Lynchburg Range & Training, LLC v. Northam*, 105 Va. Cir. 159, 164 (Lynchburg 2020); *accord Stickley v. City of Winchester*, 110 Va. Cir. 300, 326 (Winchester 2022) ("'the temporary violation of a constitutional right itself is enough to establish irreparable harm'"); *LaFave v. County of Fairfax*, 2023 Va. Cir. LEXIS 203, at *19 (Fairfax Cnty. June 23, 2023) (same). The irreparable injury in question "is the potential harm to the plaintiff – before the trial on the merits – without the preliminary relief." *Dillon*, 105 Va. Cir. at 410.

As detailed below, Plaintiffs clearly demonstrate a violation of an enumerated constitutional right, should enforcement of the Challenged Statutes take effect. The Challenged Statutes prohibit the importation, sale, manufacture, purchase, barter, transfer, and public carry of various firearms and magazines protected by Article I, Section 13 of the Virginia Constitution. But for the Challenged Statutes which infringe those rights, Plaintiffs would engage in these activities with these items. Accordingly, Plaintiffs satisfy the threshold showing of irreparable harm.

### B. Plaintiffs Are Likely to Succeed on the Merits Because the Challenged Statutes Violate the Article I, Section 13 Right to Keep and Bear Arms.

#### 1. Article I, Section 13's Text, History, and Methodological Approach.

Article I, Section 13 of the Virginia Constitution provides "[t]hat a well regulated militia, composed of the body of the people, trained to arms, is the proper, natural, and safe defense of a free state, therefore, the right of the people to keep and bear arms shall not be infringed...." This text incorporated the operative clause[2] of the federal Second Amendment, and was added to Article I, Section 13 in 1971. However, Virginians did not gain any new rights as a result of this modernization of the Virginia Constitution, or even after its original enumeration in the 1776 Declaration of Rights. Rather, protection of the natural, individual right to self-defense is not an act of legislative grace; the right exists with or without its documentary recognition and *pre-exists* any constitution. *See, e.g.*, *District of Columbia v. Heller*, 554 U.S. 570, 592 (2008) ("the Second Amendment, like the First and Fourth Amendments, codified a *pre-existing* right"); *United States v. Cruikshank*, 92 U.S. 542, 553 (1876) ("Neither is it in any manner dependent upon that instrument for its existence."). In other words, Article I, Section 13 is the Commonwealth's recognition of a pre-existing right with which Virginians were endowed by their Creator, and it operates as a fixed limitation on the power of government to enact legislation affecting firearms.

As the 1969 Virginia Commission on Constitutional Revision recognized:

> most of the provisions of the Virginia Bill of Rights hav[ing] their parallel in the Federal Bill of Rights is … no good reason not to look first to Virginia's Constitution for the safeguards of the fundamental rights of Virginians. The

[2] "[T]he right of the people to keep and bear Arms, shall not be infringed." U.S. Const. amend. II. Although Plaintiffs do not bring and expressly disavow any claims under the Second Amendment or under any other provision of the U.S. Constitution or federal law, discussion of federal authorities is appropriate because "the Court cannot examine Article I, Section 13, of the Constitution of Virginia, and the constitutionality of [the Challenged Statutes] in a vacuum." *Stickley*, 110 Va. Cir. at 318; *see also Lynchburg Range & Training v. Northam*, 455 F. Supp. 3d 238, 248 (W.D. Va. 2020) (no removal jurisdiction for an Article I, Section 13 challenge).

> Commission believes that the Virginia Bill of Rights should be a living and operating instrument of government and should, by stating the basic safeguards of the people's liberties, minimize the occasion for Virginians to resort to the Federal Constitution and the federal courts. [*Report of the Commission on Constitutional Revision* at 86 (1969); *see also Richmond Newspapers, Inc. v. Commonwealth*, 222 Va. 574 (1981).]

Consequently, Article I, Section 13 provides an independent basis for the protection of individual rights without resort to federal law. And although Article I, Section 13 may provide even stronger protection than the U.S. Constitution, it must, at a minimum, protect rights on a coextensive basis.

Indeed, based on the textual similarity between Article I, Section 13 and the Second Amendment's operative clause, as well as the 1971 General Assembly's well-documented legislative intent in amending it, Article I, Section 13 "cannot provide fewer rights than the rights inherent under the Second Amendment." *Stickley*, 110 Va. Cir. at 316, 317; *see also DiGiacinto v. Rector & Visitors of George Mason Univ.*, 281 Va. 127, 134 (2011); *Elhert v. Settle*, 105 Va. Cir. 326, 330 (Lynchburg 2020) ("No party disputes that *Heller* and *McDonald* should provide the framework for analyzing the present case. Based on the quality of analysis in both cases and the absence of disagreement from the parties, the Court finds *Heller* and *McDonald* to be highly persuasive in evaluating Virginia's constitutional right to keep and bear arms.").

Notably, another Virginia Circuit Court – the *Stickley* court – already has performed an extensive analysis of Article I, Section 13, its appropriate standard of review, and its application to a City of Winchester firearm ordinance passed pursuant to state law. *Stickley*, 110 Va. Cir. at 314; *see also Elhert*, 105 Va. Cir. at 329 (performing an extensive analysis and concluding "Article I, § 13 should be interpreted with a history-and-tradition framework"). In granting a preliminary injunction against portions of the Winchester ordinance, the *Stickley* court held that 1) Article I, Section 13 is at least coextensive with the Second Amendment based on its text and history; 2) the Second Amendment's textual and historical standard of review applies to Article I, Section 13

challenges; and 3) under that standard of review, a prohibition of firearms in public places like parks and public events is unconstitutional. *Stickley*, 110 Va. Cir. at 318, 320, 325.

Thus, because Article I, Section 13 is at least coextensive with the Second Amendment, the baseline constitutional standard of review for Article I, Section 13 challenges is set forth in *District of Columbia v. Heller*, 554 U.S. 570 (2008), as reiterated and elaborated by *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022). *Stickley*, 110 Va. Cir. at 320; *see also Wilson v. Hanley*, 116 Va. Cir. 425, 431 (Lynchburg 2025) ("Under *Bruen*, any regulation affecting the right to bear arms must be rooted in the 'historical tradition of firearm regulation'...."). Beginning with *Heller*'s analysis, the Supreme Court has "expressly rejected the application of any judge-empowering interest-balancing inquiry that asks whether the statute burdens a protected interest in a way or to an extent that is out of proportion to the statute's salutary effects upon other important governmental interests," when it comes to the pre-existing right to keep and bear arms. *Bruen*, 597 U.S. at 22 (cleaned up); *see also McDonald v. City of Chicago*, 561 U.S. 742 (2010); *Caetano v. Massachusetts*, 577 U.S. 411 (2016) (per curiam). This categorical rejection of judicial interest balancing reflects the Framers' understanding that the pre-existing right to keep and bear arms "'is the very *product* of an interest balancing by the people' and it 'surely elevates above all other interests the right of law-abiding, responsible citizens....'" *Bruen*, 597 U.S. at 26. Indeed:

> [t]he very enumeration of the right takes out of the hands of government – even the Third Branch of Government – the power to decide on a case-by-case basis whether the right is really worth insisting upon. A constitutional guarantee subject to future judges' assessments of its usefulness is no constitutional guarantee at all. [*Heller*, 554 U.S. at 634.]

At bottom, *Bruen* "requires courts to assess whether modern firearms regulations are consistent with the … text and historical understanding" of the enumerated right to keep and bear arms, rather than engage in any interest-balancing or policy-laden analyses. *Bruen*, 597 U.S. at 26.

Under this framework, when the Constitution's "plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation. Only then may a court conclude that the individual's conduct falls outside the Second Amendment's [and Article I, Section 13's] 'unqualified command.'" *Bruen*, 597 U.S. at 24. In other words, if Plaintiffs' "proposed course of conduct" falls within the obvious scope of Article I, Section 13's text, such conduct is *presumed* protected and the Challenged Statutes are *presumed* unconstitutional unless Defendant carries his burden of "affirmatively" proving otherwise by showing a broad and enduring historical tradition of similar regulation. *Bruen*, 597 U.S. at 32, 19.

Article I, Section 13's absolutist language "keep and bear arms" contains no limitation on *what* arms one may acquire or transfer. Rather, it unequivocally declares that the right "shall not be infringed." Accordingly, the right presumptively belongs to all "the people," presumptively protects "all instruments that constitute bearable arms," and presumptively covers all "lawful purposes." *Heller*, 554 U.S. at 581, 582, 624. Only if Defendant can conclusively demonstrate via historical tradition that those who originally ratified Article I, Section 13 never considered certain persons, arms, or activities to be within its protections can this Court conclude that Plaintiffs' "conduct falls outside [Article I, Section 13's] 'unqualified command.'" *Bruen*, 597 U.S. at 17. Otherwise, that which Article I, Section 13 protects, it protects absolutely.

**2. Application of *Bruen*'s Framework.**

A number of courts already have analyzed the operative constitutional text such that Plaintiffs, along with their activities outlined above, clearly enjoy a strong presumption of constitutional protection. For example, there is no question that "ordinary, law-abiding, adult citizens" (like Plaintiffs) "are part of 'the people'" under the plain text. *Bruen*, 597 U.S. at 31.

Further, there is no question that Plaintiffs' proposed course of conduct – importing, selling, manufacturing, purchasing, carrying in routine nonsensitive places held open to the public, and transferring ubiquitously owned types of firearms and magazines – falls squarely within the right to "keep and bear arms." *See United States v. Rahimi*, 602 U.S. 680, 689 (2024) (emphases added) ("*when a firearm regulation* is challenged … *the Government must show* that the restriction 'is consistent with the Nation's historical tradition of firearm regulation'"); *Luis v. United States*, 578 U.S. 5, 26 (2016) (Thomas, J., concurring in the judgment) ("Constitutional rights … implicitly protect those closely related acts necessary to their exercise."). And finally, Plaintiffs' desired "arms" undoubtedly qualify for presumptive protection, as Article I, Section 13 "extends, prima facie, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding." *Heller*, 554 U.S. at 582; *see also Bruen*, 597 U.S. at 32 ("handguns are weapons 'in common use' today for self-defense"); *Snope v. Brown*, 145 S. Ct. 1534, 1535 (2025) (Thomas, J., dissenting from denial of certiorari) ("AR-15s are clearly 'Arms' under the … plain text."); *Benson v. United States*, 2026 D.C. App. LEXIS 80, at *16 (Mar. 5, 2026) ("Magazines of all capacities are arms."), *vacated, reh'g en banc granted* (D.C. Apr. 22, 2026).

Consequently, and to reiterate, because Plaintiffs indisputably are protected persons, engaging in indisputably protected activities, Defendant bears the heavy burden of proving that the Challenged Statutes' ban on the nation's most ubiquitous firearms and magazines – quintessential "Arms" – "is consistent with the … historical tradition of firearm regulation." *Bruen*, 597 U.S. at 24. Defendant cannot meet that stringent test.

When conducting this Article I, Section 13 historical analysis, a number of methodological precepts bear emphasis. First, "when it comes to interpreting the Constitution, not all history is created equal." *Bruen*, 597 U.S. at 34. "Constitutional rights are enshrined with the scope they

were understood to have *when the people adopted them*." *Id.* Accordingly, only historical evidence contemporaneous with the Founding era (*i.e.*, when Virginia first adopted its Declaration of Rights in 1776) is relevant in elucidating the scope of the right Article I, Section 13's Framers protected. *See id.* at 35 ("we must … guard against giving postenactment history more weight than it can rightly bear"); *id.* at 36 ("to the extent later history contradicts what the text says, the text controls"); *id.* ("postratification adoption or acceptance of laws that are *inconsistent* with the original meaning of the constitutional text obviously cannot overcome or alter that text"); *id.* ("post-Civil War discussions of the right to keep and bear arms 'took place 75 years after the ratification of the Second Amendment, they do not provide as much insight into its original meaning as earlier sources'"); *id.* at 37 (19th-century evidence is "mere confirmation of what the Court thought had already been established"); *id.* ("the scope of the protection applicable to the Federal Government and States is pegged to the public understanding … in 1791"); *id.* at 66 n.28 ("We will not address … 20th-century historical evidence.... As with … late-19th-century evidence, [it] … does not provide insight into the meaning of the Second Amendment when it contradicts earlier evidence."); *see also Espinoza v. Mont. Dep't of Revenue*, 591 U.S. 464, 482 (2020) (rejecting examples of 19th century-era laws even from "more than 30 States" as failing to "establish an early American tradition"). In other words, pre- and post-enactment historical evidence can only serve a confirmatory role, and cannot establish a tradition that never otherwise existed *at* ratification. Moreover, the fact that Article I, Section 13 was amended in 1971 to include the Second Amendment's operative clause is inapposite and does not change the relevant time period for historical inquiry. *See Stickley*, 110 Va. Cir. at 322 (rejecting the argument that courts should "consider[] the historical tradition as it existed when the General Assembly amended Article I, Section 13"). As discussed *supra*, the General Assembly's "purpose [was] only to

guarantee that which [wa]s already guaranteed [in the Second Amendment]," *id.* at 313, and the Second Amendment guarantees a "pre-existing" right immune to post-enactment contradictions. *Heller*, 554 U.S. at 592; *Bruen*, 597 U.S. at 35.[3]

The Challenged Statutes first take effect in Virginia later this year. Prior to that date, and since the Founding, Virginians could (and did) import, sell, manufacture, purchase, transfer, and publicly carry the sort of firearms and magazines that the Challenged Statutes now ban. Thus, even if this Court were to examine historical regulations around this later period, the Challenged Statutes postdate 1971 *by decades*, and so such analysis cannot inform the public understanding of the Article I, Section 13 right *even then*. Moreover, looking outside Virginia, there was no "assault weapons" ban in effect in 1971 – federal or state. The first such ban came almost two decades later in 1989, in the form of the Roberti-Roos Assault Weapons Control Act in California. *See* Cal. Penal Code § 30500 *et seq.* In 1971, Virginians (and in fact *all Americans*) were free to acquire, transfer, and carry the same sorts of firearms and magazines the Challenged Statutes now ban. These firearms and magazines are nothing new – they have been commonplace in this country for many decades, and the relevant technologies have been around for well over a century.

Second, it is Defendant's burden – and his alone – to affirmatively prove that the Challenged Statutes comport with the original public understanding of the Article I, Section 13 right. *Bruen*, 597 U.S. at 60 ("[W]e are not obliged to sift the historical materials for evidence to sustain [the] statute. That is [the government's] burden."). If Defendant fails to prove a broad and

[3] Plaintiffs are aware of only one post-*Bruen* Article I, Section 13 decision that rejected Founding-era primacy in favor of the public understanding as of 1971. This outlier court held that "the operable period of history for purposes of the analysis that is required in this case should be 1971." *LaFave*, 2023 Va. Cir. LEXIS 203, at *14. But while the *LaFave* court's choice of temporal focal point made a difference in that case, this Court "need not address this issue" because "the public understanding of the right … in both [1776] and [1971] was, for all relevant purposes, the same with respect to" bans on the firearms and magazines at issue here. *Bruen*, 597 U.S. at 38.

enduring historical tradition justifying the Challenged Statutes, Plaintiffs are entitled to the relief they seek. *See id.* at 24 (emphases added) (announcing that "*only*" when the government carries its burden "*may* a court conclude that the individual's conduct falls outside the Second Amendment's 'unqualified command'").

Third, in proffering historical evidence, Defendant must establish a widespread Founding-era tradition. *Bruen*, 597 U.S. at 24 (emphasis added) (contemplating a "historical *tradition* of firearm regulation"); *id.* at 30 (requiring "well-established and representative" history); *id.* at 65 (rejecting historical evidence from a mere handful of states as "outliers"). While the *Bruen* Court did not articulate just how much historical evidence constitutes a "tradition," this Court need not resolve that question because there is *no* relevant evidence to support the Challenged Statutes.

Fourth, temporal relevance is not the only consideration. As the Supreme Court recently explained while applying *Bruen* in *United States v. Rahimi*, 602 U.S. 680, 692 (2024), a challenged regulation must be "consistent with the principles that underpin our regulatory tradition," and "[a] court must ascertain whether the new law is 'relevantly similar' to laws that our tradition is understood to permit...." Accordingly, the "how and why" of purported historical analogues must align with the Challenged Statutes if they are to offer any support. *Bruen*, 597 U.S. at 29.[4] But even so, "when a challenged regulation addresses a general societal problem that has persisted since the 18th century, the lack of a distinctly similar historical regulation addressing that problem

[4] For example, "a green truck and a green hat are relevantly similar if one's metric is 'things that are green.' They are not relevantly similar if the applicable metric is 'things you can wear.'" *Id.* (citation omitted). Accordingly, Defendant cannot cobble together a purported tradition of disparate laws that did *not* ban firearms and magazines based on their features and capacities. Thus, Founding-era prohibitions on firearm sales to noncitizen Indians, or regulations concerning the storage of volatile gunpowder – by way of example – have *nothing* to do with *what* firearms and magazines one may acquire, nor do they address the same purported societal problems (*i.e.*, they have a different "how" and "why") as the Challenged Statutes.

is relevant evidence that the challenged regulation is inconsistent with the Second Amendment." *Id.* at 26. Because Defendant cannot possibly bear his historical burden, the Challenged Statute violates Article I, Section 13.

**3. Because the Banned Firearms and Magazines Are in "Common Use," the Challenged Statutes Are "Invalid."**

But this Court need not even proceed to historical analysis, as no historical tradition could ever justify the ban of firearms and magazines "in common use" today. *See Bruen*, 597 U.S. at 47. Because the Challenged Statutes ban firearms and magazines that Virginians overwhelmingly choose for lawful purposes, the Challenged Statutes are simply "invalid" without further analysis. *See Heller*, 554 U.S. at 629. Take the ubiquity of the semi-automatic AR-15 rifle, for example. In *Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, 605 U.S. 280, 297 (2025), a unanimous U.S. Supreme Court explained that so-called "'military style' assault weapons, … includ[ing] AR-15 rifles, AK-47 rifles, and .50 caliber sniper rifles," are "both widely legal and bought by many ordinary consumers." And as Justice Kavanaugh observed in *Snope v. Brown*, 145 S. Ct. 1534 (2025), "Americans today possess an estimated 20 to 30 million AR-15s. And AR-15s are legal in 41 of the 50 States, meaning that the States such as Maryland that prohibit AR-15s are something of an outlier." *Id.* at 1534 (Kavanaugh, J., respecting denial of certiorari). Likewise, standard-capacity magazines "facilitate armed self-defense and law-abiding citizens possess hundreds of millions of them in this country." *Benson*, 2026 D.C. App. LEXIS 80, at *25, *vacated, reh'g en banc granted* (D.C. Apr. 22, 2026).

The modern popularity of these arms has analytical significance. In *Caetano v. Massachusetts*, 577 U.S. 411 (2016), a per curiam summary reversal, the Court found stun guns to be protected, despite only "'approximately 200,000'" known examples nationwide. *Id.* at 420 (Alito & Thomas, JJ., concurring in the judgment); *see also Maloney v. Singas*, 351 F. Supp. 3d

222, 237, 238 (E.D.N.Y. 2018) (finding "at least 64,890 metal and wood nunchaku" nationwide constitutes "common use"). Thus, for the *hundreds of millions* of firearms and magazines banned by the Challenged Statutes, the people's preferences prevail.

So too do the Governor's statements on SB749 have significance. As she acknowledged upon signing the bill, "the General Assembly chose not to adopt my amendment that *specifically carves out certain firearms frequently used for hunting*...."[5] By the Governor's own admission, the Challenged Statutes ban firearms in "common use."

The Challenged Statutes' ban on public carry of these clearly protected firearms, as set forth in Section 18.2-287.4 as amended, is equally "invalid." The plain language of this statute sweeps well beyond any narrow ban on possessing firearms in any purportedly "sensitive places." *See, e.g.*, *Bruen*, 597 U.S. at 30 (assuming that firearms were restricted in Founding-era "legislative assemblies, polling places, and courthouses"). Rather, Section 18.2-287.4 categorically bans the carry of "assault firearms" on every road, sidewalk, park, and every place of any kind whatsoever that the public is allowed to enter – places where ordinary citizens, including Plaintiffs, are presumptively entitled to carry firearms in public for self-defense and other lawful purposes. Yet "the Second Amendment guarantees an 'individual right to possess and carry weapons in case of confrontation,' and confrontation can surely take place outside the home." *Id.* at 33 (citation omitted). Further, the legislature cannot dictate which *types* of commonly owned arms an individual may choose to carry. Inherent in the right to keep and bear arms is the right to choose *amongst* bearable arms. *See Heller*, 554 U.S. at 629 ("It is no answer to say … that it is permissible to ban the possession of handguns so long as the possession of other firearms (*i.e.*, long guns) is

[5] *Locked and Loaded: Spanberger Inadvertently Makes Case for Striking Down New Gun Ban*, Jonathan Turley (May 17, 2026), https://tinyurl.com/yw9x594z.

allowed. It is enough to note … that the American people have considered the handgun to be the quintessential self-defense weapon."). The Commonwealth has no authority to dictate which firearms Virginians may carry any more than it may dictate which religious texts they read.

As another Virginia court explained, "there is no historical basis to permit broad prohibitions on public carry." *Stickley*, 110 Va. Cir. at 323. In fact, "the relevant historical period both in Virginia and the United States demonstrates that citizens could carry in public if they were not doing so to cause terror – malice or bad intent." *Id.* at 324. The General Assembly cannot declare every public place and road in the Commonwealth to be a gun-free zone for the most ubiquitous firearms that Virginians own and carry, any more than New York can ban firearms from the entire island of Manhattan. *See Bruen*, 597 U.S. at 31. If the purchase, transfer, manufacture, and transfer of firearms that the General Assembly has now banned is protected by Article I, Section 13, then it necessarily follows that Virginians also have a right to bear those arms in public.

**4. Federal Authorities Upholding Modern "Assault Weapons" Bans Are Nonbinding and Unpersuasive.**

Expectedly, Defendant will ask this Court to adopt the reasoning of Fourth Circuit opinions upholding Maryland's "assault weapons" ban under the Second Amendment. *See Kolbe v. Hogan*, 849 F.3d 114 (4th Cir. 2017); *Bianchi v. Brown*, 111 F.4th 438 (4th Cir. 2024). But those intermediate federal opinions – issued by a court not known for its full-throated defense of Second Amendment rights – neither bind this Court, nor are they persuasive here.

First, Virginia courts review questions of statutory constitutionality *de novo*. *Montgomery Cnty. v. Va. Dep't of Rail & Pub. Transp.*, 282 Va. 422, 435 (2011); *Covel v. Town of Vienna*, 280 Va. 151, 163 (2010). State courts addressing such questions occupy an independent, co-equal position with all federal courts below the Supreme Court. Thus, "[i]n passing on federal constitutional questions, the state courts and the lower federal courts have the same responsibility

and occupy the same position; there is a parallelism but not paramountcy for both sets of courts are governed by the same reviewing authority of the Supreme Court." *State v. Coleman*, 214 A.2d 393, 403 (N.J. 1965). Therefore, opinions of the Fourth Circuit do not absolve Virginia courts of their independent obligation to interpret the law. And certainly, *no federal court* can bind Virginia courts as to the meaning of *state* law – the basis of Plaintiffs' challenge here.

Second, while Fourth Circuit opinions are at most persuasive authority,[6] *Kolbe* and *Bianchi* are entirely *unpersuasive* here. *Kolbe* was a pre-*Bruen* interest-balancing opinion that upheld Maryland's ban on popular arms under the repudiated, "less onerous standard" of "intermediate scrutiny." *Kolbe*, 849 F.3d at 133; *cf. Bruen*, 597 U.S. at 22 (quotations omitted) (rejecting "application of any judge-empowering interest-balancing inquiry"). Meanwhile, *Bianchi* upheld Maryland's ban under the Second Amendment's plain text, claiming that AR-15s are not even presumptive "Arms" based on judges' assessments of their *suitability* for "civilian" self-defense. *See Bianchi*, 111 F.4th at 458. Not only does this thinly veiled interest-balancing opinion contravene *Heller* and *Bruen*'s pronouncements on the original meaning of "Arms," but *Bruen*'s own author has excoriated *Bianchi*'s reasoning. *See Snope*, 145 S. Ct. at 1535-39 (Thomas, J., dissenting from denial of certiorari). This Court simply should apply *Heller* and *Bruen* as written.

**C. While Plaintiffs Face Irreparable Harm, An Injunction Would Not Harm Defendant.**

The balance of equities weighs in Plaintiffs' favor. Plaintiffs' state constitutional rights will be violated in real and concrete ways if the Challenged Statutes take effect. In contrast, as

[6] *See, e.g.*, *Lockhart v. Fretwell*, 506 U.S. 364, 376 (1993) (Thomas, J., concurring) ("[N]either federal supremacy nor any other principle of federal law requires that a state court's interpretation of federal law give way to a (lower) federal court's interpretation."); *Owsley v. Peyton*, 352 F.2d 804, 805 (4th Cir. 1965) (denying that a Fourth Circuit decision alters existing Virginia law and acknowledging that, "[t]hough state courts may for policy reasons follow the decisions of the Court of Appeals whose circuit includes their state … they are not obligated to do so").

law-abiding Virginians, Plaintiffs' importation, sale, manufacture, purchase, barter, transfer, and public carry of "assault firearms" and "large capacity ammunition feeding devices" – conduct that has occurred lawfully for decades – will cause Defendant no harm whatsoever. *See, e.g.*, *Robar v. Vill. of Potsdam Bd. of Trs.*, 490 F. Supp. 3d 546, 574 (N.D.N.Y. 2020) ("The Government … 'does not have an interest in the enforcement of an unconstitutional law.'"); *Fraser v. BATFE*, 689 F. Supp. 3d 203, 214 (E.D. Va. 2023) ("any minimal hardship that may befall the Government from not being able to enforce the unconstitutional statute … must yield to that harm suffered by the individual whose constitutional rights are being denied"). Indeed, an injunction merely would preserve the status quo – one that has existed for all of Virginia's history. The very same firearms and magazines banned by the Challenged Statutes have been in circulation in Virginia for decades, if not over a century. The sky will not fall if this Court were to simply pause the Challenged Statutes' effective date, pending a merits decision in this case.

**D. Protecting Constitutional Rights Is Always in the Public Interest.**

Finally, the public interest supports the granting of an injunction, because it is always in the public interest that the government be prevented from infringing enumerated constitutional rights. *See Stickley*, 110 Va. Cir. at 326 (citation omitted) ("'[T]he public interest favors enjoining a constitutional violation.... [I]t is not adverse to the public interest to grant a preliminary injunction in order to preserve a constitutional right pending trial."); *Legend Night Club v. Miller*, 637 F.3d 291, 302-03 (4th Cir. 2011) ("Maryland is in no way harmed by issuance of an injunction that prevents the state from enforcing unconstitutional restrictions. … [U]pholding constitutional rights is in the public interest.").

## CONCLUSION

For the foregoing reasons, Plaintiffs' Motion for Temporary Restraining Order and Preliminary Injunction should be granted.

Respectfully submitted,

**JOHN CRUMP,**
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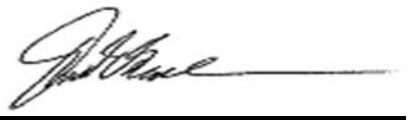
**BY:** 

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## CERTIFICATE OF SERVICE

In accordance with Va. Code § 8.01-629, the undersigned certifies that, on May 18, 2026, a true and accurate copy of the foregoing Memorandum in Support of Motion for Temporary Restraining Order and Preliminary Injunction was emailed to the following:

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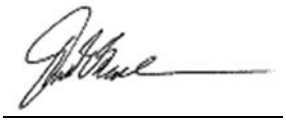

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