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Re: Notice Regarding Any Possible Enforcement of Va. Code § 18.2-308.2:5

Mr. Brown and Ms. Burgess,

On April 22, 2026, the General Assembly passed the Governor’s amended version of House Bill 1525, amending and reenacting Va. Code § 18.2-308.7. Part of the language contained in this bill, which originated as substitute language proposed by the Governor, is Section 2, which states “[t]hat the Department of State Police shall administer, enforce, and otherwise implement § 18.2-308.2:5 of the Code of Virginia from the effective date of this bill.”

As you know, Va. Code § 18.2-308.2:5 is the statute generally requiring a universal background check for all private sales of firearms within the Commonwealth. And, as you are also aware, that statute was declared unconstitutional *in toto* on October 29, 2025, in *Wilson v. Hanley*, No. CL25000582-00 (Lynchburg Cir. Ct.); *see also Wilson v. Hanley*, 116 Va. Cir. 425 (Lynchburg 2025), with its enforcement and administration by the Department of State Police permanently enjoined.

As the Department of State Police’s website currently and correctly summarizes, “[t]he Order prohibits the State Police from running, or assisting in the running, of private sale background checks pursuant to the provisions of § 18.2-308.2:5. Virginia law currently does not require ... criminal history background checks for the private sale of firearms.”

Nevertheless, HB 1525 Section 2 demands precisely the opposite, purporting in plain language to require the Superintendent – your client – to violate the Court’s October 29, 2025 final order.

Of course, a statute expressly requiring the violation of the terms of a court order is null and void – dead on arrival. Indeed, we submit that HB 1525 shows a gross disregard of – even contempt for – the constitutional separation of powers and the proper role of judicial authority. As the U.S. Supreme Court has explained, “[a]n injunction duly issuing out of a court of general jurisdiction with equity powers upon pleadings properly invoking its action, and served upon persons made parties therein and within the jurisdiction, must be obeyed by them.... It is for the court of first instance to determine the question of the validity of the law, and until its decision is reversed for error by orderly review, either by itself or by a higher court, its orders based on its decision are to be respected, and disobedience of them is contempt of its lawful authority, to be punished.” *Howat v. Kansas*, 258 U.S. 181, 189-90 (1922).

Likewise, the Supreme Court has explained that “ratification of the Constitution ... forbade [legislative] interference with the final judgments of courts.” *Plaut v. Spendthrift Farm*, 514 U.S. 211, 223 (1995). Thus, when the Court upheld a congressional enactment that allowed for termination of previously issued equitable relief, it did so only because the statute did not “directly suspend[] a court order in violation of the separation of powers doctrine....” *Miller v. French*, 530 U.S. 327, 335 (2000). Otherwise, “depriving judicial judgments of the conclusive effect that they had when they were announced” violates separation of powers. *Plaut*, 514 U.S. at 228.

Our expectation is that your client, the Superintendent, will continue to abide by the Court’s October 29, 2025 order, unless and until a court empowered to do so acts in a manner that would relieve him of this obligation. Indeed, courts “have long presumed that officials of the Executive Branch will adhere to the law as declared by the court.” *Comm. on the Judiciary of the U.S. House of Representatives v. Miers*, 542 F.3d 909, 911 (D.C. Cir. 2008); accord *Florida v. HHS*, 780 F. Supp. 2d 1307, 1315 (N.D. Fla. 2011) (“it will not be presumed that [an] officer will ignore the judgment of the Court”).

If the Superintendent believes or intends to proceed otherwise, please let us know at your earliest convenience. To the extent that the Department of State Police intends to remove its current – and accurate – posting as to the present state of the law from its website, or otherwise intends to take steps to administer and/or enforce the provisions of § 18.2-308.2:5 pursuant to HB 1525, please advise us promptly of the same, so that we can immediately initiate contempt proceedings in the circuit court.

Sincerely,



David G. Browne

DGB/