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,

Defendant.

PLAINTIFFS' REPLY 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 further support of their Motion for Temporary Restraining Order and Preliminary Injunction state the following:

SUMMARY OF REPLY

Taking the 'see-what-sticks' approach, Defendant proffers every argument in the book as to why the Challenged Statutes are constitutional, asserting that the Commonwealth's sweeping and unprecedented firearm and public carry ban should be allowed to take effect without so much as a second thought to maintaining – even temporarily – centuries of the status quo.

Defendant begins with a naked request for this Court to relitigate *District of Columbia v. Heller,* 554 U.S. 570 (2008). Even though the Supreme Court definitively ruled nearly two decades ago that the Second Amendment enumerates and guarantees a pre-existing, individual right, Defendant claims that the virtually identical language in Article I, Section 13, which protects "the body of people trained to arms," in fact protects the right of no people at all – just a collective right of states to maintain a militia. Unsurprisingly, every Virginia court on record has rejected that notion.

Next, untethered to any existing judicial precedent, Defendant offers this Court his entirely made-up creation – what he calls "the Virginia methodology." But this "methodology" – if it can even be called that – is nothing more than repackaged "judge-empowering interest balancing" that the Supreme Court expressly rejected in *Heller* and repudiated again in *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 17 (2022).

Then, even after finally acknowledging the governing *Bruen* framework, Defendant seeks to invert – and dilute – the Supreme Court's stringent methodology. Bristling at the notion that the Challenged Statutes are presumed *un*constitutional until proven otherwise as held in *Bruen*, Defendant seeks to slough his burden onto Plaintiffs, accusing them of offering "no evidence" from "experts." Apparently confusing the scales of justice with a literal balancing scale laden with reams of paper, Defendant boasts that he has offered hundreds of pages – 792 pages, to be precise – of declarations and exhibits from "*six* subject-matter experts."

But Defendant's mountain of paperwork is a paper tiger. His brief largely fails to engage with any of Plaintiffs' arguments, choosing instead to talk past them with a barrage of prepackaged, cookie-cutter arguments no doubt provided to Defendant by an anti-gun advocacy group or law firm. Together with this off-the-shelf briefing, Defendant trots out the usual suspects – anti-gun

radicals from the likes of Berkeley and Columbia. True believers, to say the least. And so, unsurprisingly, Defendant's "experts" misrepresent history, misunderstand how firearms work, and oftentimes present misleading or even demonstrably false "facts." The Fifth Circuit put it best: "Our analysis of the Second Amendment must be guided by history – not hoplophobia." *United States v. Cockerham*, 162 F.4th 500, 502 (5th Cir. 2025).

At bottom, Defendant largely regurgitates arguments that both federal and Virginia courts have rejected time and again. And with respect to his burden under *Bruen*, Defendant comes nowhere close to meeting it. He cites "trap gun" laws that regulated *traps*, not *guns*. He cites Bowie knife regulations in an attempt to paper over a corresponding dearth of *firearm* regulations. He relies on 19th-century revolver laws that were racist creations designed to subjugate newly freed slaves while ensuring that white former soldiers remained well armed. And the laws he claims regulated "semi-automatic weapons" in fact banned fully automatic machineguns.

Defendant's inability to articulate a coherent historical record to justify his new and sweeping ban on the most popular firearms and magazines in the nation is hardly surprising – because there is no such tradition. For the reasons that follow, this Court should grant Plaintiffs' Motion, and should temporarily restrain and/or preliminarily enjoin enforcement of the Challenged Statutes pending a final decision on the merits. The enumerated constitutional rights of millions of Virginians are at stake.

ARGUMENT

I. Defendant's Threshold Arguments Fail.

A. Plaintiffs Have Standing.

Defendant argues that the Organizational Plaintiffs lack standing, on the theory that they have not shown "express statutory authorization." Defendant Katz's Opposition to Motion for Preliminary Injunction ("Opp.") at 4. But that is not the law, and Virginia courts have recognized Plaintiffs' representational standing in other cases. *See, e.g.*, *Wilson v. Settle*, 2024 Va. Cir. LEXIS 612, at *1-2 (Lynchburg Dec. 17, 2024) ("the organizational members had representational standing to go forward with their claims"). Nevertheless, because Defendant concedes that Crump has standing (Opp. at 3, "four of the five Plaintiffs lack standing"), this Court need not address the issue now. *See Outdoor Amusement Bus. Ass'n v. DHS*, 983 F.3d 671, 681 (4th Cir. 2020) ("only one plaintiff needs to have standing for a court to hear the case").

Next, Defendant appears to claim that there is no credible threat of enforcement from Katz against Crump, on the theory that the Virginia State Police merely "administer certain firearms-transaction functions." Opp. at 4; *see also id.* at 5 (administer "dealer-based firearm transactions"). But VSP is much more than that – it is a statewide law enforcement agency of general jurisdiction. Va. Code § 52-8. And VSP troopers routinely "enforc[e] all the criminal laws of this Commonwealth." *Id.* Defendant has not disclaimed enforcement of the Challenged Statutes against Crump or anyone else, and Plaintiffs are presumed to suffer a credible threat of enforcement in the face of a recently enacted and non-moribund criminal statute that the government is now defending in court. *See 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."); *see also Butler v. Bondi*, 805 F. Supp. 3d 1175, 1196 (N.D. Ala. 2025) ("the court can infer a credible threat of

enforcement when a plaintiff challenges a law soon after its enactment and the government has 'vigorously defended' the law in court"). If Defendant wished to disclaim enforcement against Crump, his responsive brief is not how to do it. Indeed, were Crump to make post-July 1 acquisitions of firearms at Chandler's Firearms in Lancaster County, and transport them home on Virginia's interstate and state highways, Defendant's troopers would be the ones most likely to stop, detain, search, and arrest Crump for violating the Challenged Statutes.

Rather than acknowledge that he is a proper party to be sued, Defendant finger points at "Commonwealth's Attorneys and local law enforcement," arguing that any forfeiture proceedings or prosecutions would be brought by those officials, not Katz. Opp. at 4. But forfeiture and prosecution are not the only forms of enforcement – detention, arrest, and seizure by VSP certainly count, too. Nor, to Plaintiffs' knowledge, has the Commonwealth's Attorney or Sheriff for Lancaster County disclaimed enforcement of the Challenged Statutes, so there is no reason to believe that a VSP arrest there would not be prosecuted. Even so, these issues have been resolved – and foreclosed against Defendant – by Virginia courts. *See, e.g.*, *Wilson*, 2024 Va. Cir. LEXIS 612 (permanently enjoining Defendant from enforcing another statewide gun control law). Rather than being on the periphery of the harm threatened against Crump, Defendant is at the center of it.

Finally, Defendant theorizes that any injunction this Court might issue could only stop Katz, not others. Opp. at 5. But this Court is a court of statewide jurisdiction, with authority to bind prosecuting officials statewide. *See* Va. Code § 8.01-620. Another circuit court did that very thing just last week – even though Defendant was the only defendant named there. *See* Order, *Wilson v. Katz*, No. CL20-582-01 (Lynchburg Cir. Cit. June 5, 2026) ("The Virginia Department of State Police, *and all law enforcement divisions, agencies, and officers within the Commonwealth*

… shall continue to abide by the Injunction Order…") (emphasis added).[1] Defendant offers no reason (much less authority) to justify departing from that normal practice.[2]

B. Plaintiffs Mount Both Facial and As-Applied Challenges.

Defendant next seeks to cabin Plaintiffs' case as a "facial challenge" *only*, claiming that "Plaintiffs do not target particular weapons or features; they argue that the entire statute is unconstitutional." Opp. at 5-6. Apparently, Defendant missed Plaintiff Crump's entire declaration, which provides a highly specific list of particular firearms and magazines that he wishes to acquire. *See* Compl. Ex. C ¶¶15-33. Not to mention, Plaintiffs expressly cast their vagueness challenge as being "as applied to certain firearms." Compl. Introduction, ¶186. Plaintiffs have clearly – obviously – brought both facial and as-applied challenges here and, despite Defendant's desire to limit their case, Plaintiffs – not Katz – are masters of their complaint. *See Select Equip., LLC v. Breeden Constr., L.L.C.*, 115 Va. Cir. 474, 476 (Cir. Ct. 2025) ("It is axiomatic that a plaintiff is 'the master of his complaint' in Virginia.").

Either way, "the distinction between facial and as-applied challenges … goes to the breadth of the remedy employed by the Court, not what must be pleaded in a complaint." *Citizens United v. FEC*, 558 U.S. 310, 331 (2010). The issue of facial versus as-applied relief is not the formalistic

[1] https://foundation.gunowners.org/wp-content/uploads/cases/wilson-v-hanley/CL2058201-CourtOrder20250605.pdf.

[2] Nor are Plaintiffs required to sue every possible defendant who might enforce the Challenged Statutes against them. It is enough to get some relief against one Defendant, as "[t]he removal of even one obstacle to the exercise of one's rights, even if other barriers remain, is sufficient to show redressability." *Deal v. Mercer Cnty. Bd. of Educ.*, 911 F.3d 183, 190 (4th Cir. 2018). Moreover, even a statewide declaratory judgment has significant preclusive effect, as courts generally assume that law enforcement entities will obey the law as stated by the court. *See, e.g.*, *Mock v. Garland*, 2024 U.S. Dist. LEXIS 105230, at *18 (N.D. Tex. June 13, 2024) ("courts presume that the … government will comply with its rulings"); *Steffel v. Thompson*, 415 U.S. 452, 470 (1974) ("The persuasive force of the court's opinion and judgment may lead state prosecutors, courts, and legislators to reconsider their respective responsibilities toward the statute.").

and unyielding rule of pleading that Defendant makes it out to be. Nor does the Court need to deal with that issue at the temporary injunction stage, as it is clear that the status quo should be maintained pending further detailed analysis at a later date.

Next, Defendant claims to have identified two fringe "constitutional" applications of the law that he argues save the Challenged Statutes from facial constitutional invalidity. Opp. at 6. But (i) neither of Defendant's applications is itself constitutional and (ii) it is not the law that merely identifying some theoretical constitutional application at the margin will save a clearly unconstitutional enactment. Nevertheless, Defendant claims that the Challenged Statutes are constitutional as to "firearms equipped with grenade launchers" and "threaded barrels capable of accepting suppressors."[3] Opp. at 6. But that is not the case. For starters, the statute does not ban "grenade launchers," but rather a "*rifle* that has the ability to accept … a grenade launcher." Compl. ¶29 (emphasis added). *Plaintiffs challenge a gun ban, not a grenade launcher ban*. Even so, Defendant provides no analysis (much less authority) whatsoever to show that grenade launchers are not protected arms – which is his burden to prove.[4] *See N.Y. State Rifle & Pistol*

[3] Accepting Defendant's argument would mean that *District of Columbia v. Heller*, 554 U.S. 570, 629 (2008), would come out differently. Yet, even though the Supreme Court could have found the law at issue there "constitutional" as applied to machinegun pistols, or possession of handguns in the home by felons, the Court instead found the law facially unconstitutional. *Id.* at 577. Likewise, in a Fourth Amendment case, *City of Los Angeles v. Patel*, 576 U.S. 409, 417-18 (2015), the Supreme Court rejected the notion that a law could not be facially invalidated just because the police could respond "to an emergency, where the subject of the search consents to the intrusion, and where police are acting under a court-ordered warrant." As the Court explained, rejecting facial challenges based on fringe speculation of constitutional application would "preclude facial relief in every Fourth Amendment challenge to a statute authorizing warrantless searches." *Id.* at 418.

[4] Of course, even if grenade launchers were not protected, the actual grenades that they fire are heavily regulated as "destructive devices" under federal law, requiring taxation and registration. And contrary to Defendant's claim that grenade launchers are "designed for wide-area destruction" and have "no plausible lawful, civilian self-defense function" (Opp. at 6), there are numerous non-explosive rounds that they fire – like chalk, smoke, and nonlethal tear gas. Defendant offers no explanation how the use of tear gas in defending against a violent mob burning

Ass'n v. Bruen, 597 U.S. 1, 17 (2022) ("To justify its regulation … the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation."). Similarly, although Defendant claims that "the Second Amendment does not protect[5] the possession of a silencer" (Opp. at 6), silencers are widely possessed by millions and lawfully owned under both federal and Virginia law.[6] Not to mention, the federal government recently explained that silencers are in fact Second Amendment protected arms.[7]

Finally, Defendants hang their hat on *United States v. Salerno*, 481 U.S. 739, 745 (1987), claiming that "[i]f even one application of SB749 is constitutional, the facial challenge fails." Opp. at 6. But not even the Supreme Court reads *Salerno* that way. Indeed, "[t]o the extent we have consistently articulated a clear standard for facial challenges, it is not the *Salerno* formulation, which has never been the decisive factor in any decision of this Court, including *Salerno* itself...." *City of Chicago v. Morales*, 527 U.S. 41, 55 n.22 (1999). As the Tenth Circuit explains, "[t]he idea that the Supreme Court applies the 'no set of circumstances' test to every facial challenge is simply a fiction, readily dispelled by a plethora of Supreme Court authority." *Doe v. City of Albuquerque*, 667 F.3d 1111, 1124 (10th Cir. 2012). Rather, a plaintiff can succeed on a facial challenge if "he

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down homes and shops, for example, is not a "lawful, civilian self-defense function." *See* Whitney Woodworth et al., *Police Use Tear Gas to Disperse Protesters in Downtown Salem; State of Emergency Declared, Curfew Instituted*, USA Today (May 31, 2020), https://redraiderswire.usatoday.com/story/news/2020/05/31/police-use-tear-gas-disperse-protesters-downtown-salem-curfew-instituted/5301245002/.

[5] Recall, the same Defendant who invokes the "Second Amendment" is the same one who claims that "Federal Second Amendment doctrine does not control the meaning of § 13." Opp. at 14.

[6] As of January 23, 2026, Americans lawfully own nearly 6 million silencers, according to the ATF. *See* https://americansuppressorassociation.com/news/atf-provides-updated-suppressor-registration-data.

[7] *See* https://assets.nationbuilder.com/firearmspolicycoalition/pages/10472/attachments/original/1748040757/2025.05.23_129-2_Government's_Supplemental_Response.pdf?1748040757 at 1.

shows that the law lacks a 'plainly legitimate sweep.'" *Moody v. NetChoice, LLC*, 603 U.S. 707, 723 (2024); *see also Americans for Prosperity Found. v. Bonta*, 594 U. S. 595, 615 (2021) (asking whether "a substantial number of [the law's] applications are unconstitutional, judged in relation to the statute's plainly legitimate sweep"); *Antonyuk v. James*, 120 F.4th 941, 983 (2d Cir. 2024) (cleaned up) ("To mount a successful facial challenge, the plaintiff must establish that no set of circumstances exists under which the law would be valid, or show that the law lacks a plainly legitimate sweep."); *United States v. Canada*, 123 F.4th 159, 161 (4th Cir. 2024) (same). By banning *the most common and widely owned firearms and magazines in the nation*, the Challenged Statutes clearly lack a "plainly legitimate sweep," justifying their wholesale invalidation. If the General Assembly wishes to enact a narrow statute banning grenade launchers, it is free to attempt as much next session.

But again, this Court need not address the *Salerno* issue. *The Challenged Statutes ban firearms*, not grenade launchers and threaded barrels. The fact that some previously lawful firearms can be equipped with devices *that are themselves also lawful to possess* does not eliminate the firearms' constitutional protection.

C. Plaintiffs Will Imminently Suffer Irreparable Harm.

Claiming that Plaintiffs run no risk of suffering irreparable harm, Defendant makes three equally curious arguments. First, Defendant characterizes Plaintiffs' intended courses of conduct as mere "wish[es]" that are "mere possibility." Opp. at 6-7. But that is demonstrably false – Plaintiffs' pleadings are replete with highly specific intended activities, within specific timeframes, each of which is expressly foreclosed by the Challenged Statutes. *See, e.g.*, Ex. C ¶¶13-14 ("I plan on visiting Chandler's Firearms.... I plan on … acquiring at least one (but likely more) … firearms and magazines"); *id.* at ¶¶ 16-21 ("I would acquire this [firearm or magazines] … within three

months … but for my fear of criminal prosecution"). Of course, Defendant ignores all of this, cherry-picking the word "wish" from Plaintiffs' pleadings.

Second, Defendant demurs that the Challenged Statutes allow Plaintiffs to retain already-possessed items. Opp. at 7. But Article I, Section 13 protects "the right to keep and bear arms" – not "arm." No court would entertain a book ban on the theory that the plaintiff's home library already contains a number of *other* books. Defendant also assumes (without evidence) that every single one of the Organizational Plaintiffs' members and supporters already owns a gun (*id.*), which is hardly the case. Finally, Defendant claims that Plaintiffs may continue to purchase firearms "manufactured to be compliant with state restrictions" (*id.*) but, as Plaintiffs already explained, the Supreme Court rejected the notion that "it is permissible to ban the possession of [one category of firearms] so long as the possession of other firearms … is allowed."[8] *District of Columbia v. Heller*, 554 U.S. 570, 629 (2008); *see* Plaintiffs' Memorandum in Support of Their Motion for Temporary Restraining Order and Preliminary Injunction ("TRO") at 17. At bottom, if this Court finds Plaintiffs likely to succeed on the merits, a finding of irreparable harm to their constitutional rights flows automatically. *See* TRO at 7.

Third, Defendant claims that "Plaintiffs are not currently being denied any right, and no legally cognizable injury has yet occurred," so "appropriate relief" should only issue "[i]f Plaintiffs ultimately prevail." Opp. at 7. Defendant does not further explain this curious theory. Of course, "Damocles's sword does not have to actually fall … before the court will issue an injunction," *League of Women Voters of the U.S. v. Newby*, 838 F.3d 1, 9 (D.C. Cir. 2016), and "where

[8] *See also First Choice Women's Res. Ctrs., Inc. v. Davenport*, 224 L. Ed. 2d 672, 689 (2026) ("A government that takes three limbs but spares the last imposes an injury all the same. So too here. The question before us isn't how badly the Attorney General has burdened First Choice's associational rights; the question is whether he has burdened those rights at all.").

threatened action by government is concerned, we do not require a plaintiff to expose himself to liability before bringing suit...." *MedImmune, Inc. v. Genentech, Inc.*, 549 U. S. 118, 128-29 (2007) (emphasis removed). Injunctive relief to stop an imminently approaching violation of the constitutional rights of *millions* is quintessentially the role of courts.

Absent injunctive relief from the Court, the Plaintiffs not only face the threat of arrest and criminal charges, but will be prevented from purchasing any of the prohibited firearms from any dealer – including Chandlers Firearms as alleged – because the Challenged Statutes prohibit dealers from transferring these firearms to ordinary citizens as of July 1.

II. Plaintiffs Have Shown a Clear Likelihood of Success on the Merits.

Defendant declares that "SB749 is presumptively constitutional." Opp. at 8. But the U.S. Supreme Court has said precisely the opposite in the case of laws that run afoul of the right to keep and bear arms. In fact, because the Challenged Statutes indisputably regulate persons, arms, and activities that the Second Amendment presumptively protects, they are presumptively ***un***constitutional. *See Bruen*, 597 U.S. at 17 ("when the … plain text covers an individual's conduct, the Constitution presumptively protects that conduct"); *accord Stickley v. City of Winchester*, 110 Va. Cir. 300, 321 (Winchester 2022) ("Plaintiffs' right to … firearms … is presumptively protected under Article I, Section 13."); *Wilson v. Hanley*, 116 Va. Cir. 425, 431 (Lynchburg 2025) ("any regulation affecting the right to bear arms must be rooted in the 'historical tradition of firearm regulation'"). Defendant thus bears the burden of proving consistency with historical tradition. *Stickley*, 110 Va. Cir. at 321. He has failed to bear that burden here.

A. Defendant Misstates the Legal Framework for Article I, Section 13 Claims.

Defendant claims that "the Supreme Court of Virginia has not yet adopted a specific test for evaluating challenges under § 13...." Opp. at 8. Thus, because the texts of Article I, Section

13 and the Second Amendment apparently "differ" in "dispositive" ways under *Vlaming v. W. Point Sch. Bd.*, 302 Va. 504, 530 (2023), Defendant urges departure from the consensus of Virginia circuit courts to have analyzed Article I, Section 13 under the rigorous *Bruen* framework.[9] Opp. at 8. In its place, Defendant urges standardless and "judge-empowering"[10] interest "balancing" of the Commonwealth's alleged "public-safety interest" against the Challenged Statutes' supposedly "modest burden on the asserted right...." Opp. at 10. Alternatively, Defendant posits that the Challenged Statutes survive under *his* version of *Bruen*'s framework. Opp. at 9. But Defendant is wrong on all counts.

First, Article I, Section 13 and the Second Amendment do not contain the same sorts of "marked textual differences" at issue in *Vlaming*, 302 Va. at 530. Not even close. In *Vlaming*, the Virginia Supreme Court contrasted the First Amendment's partial-sentence free-exercise clause with Article I, Section 16's *full paragraph* on religion. *See id.* at 529. Based on these differences, *Vlaming* found the U.S. Supreme Court's First Amendment precedents merely "inform[ative]." *Id.* at 530. In contrast here, Defendant points only to the addition of the word "therefore" in Article I, Section 13's text, as opposed to the Second Amendment's lone comma. Opp. at 8. But that addition changes nothing about Article I, Section 13's meaning compared to the Second Amendment. Indeed, "[t]he Amendment could be rephrased, '*Because* a well regulated Militia is necessary to the security of a free State, the right of the people to keep and bear Arms shall not be infringed.'" *Heller*, 554 U.S. at 577 (emphasis added). So whether one trades a "because" at the

[9] Defendant also asks this Court to ignore the direct application of *Bruen* by the Court of Appeals of Virginia in Second Amendment challenges to criminal charges. *See, e.g.*, *Genevan v. Commonwealth*, 83 Va. App. 1 (2024); *Watkins v. Commonwealth*, 83 Va. App. 456 (2025); *Commonwealth v. Webb*, No. 1805-24-3 (Va. App. Mar. 25, 2025) (all applying *Bruen* to analyze Second Amendment challenges to Virginia criminal code sections).

[10] *Bruen*, 597 U.S. at 22.

beginning for a "therefore" in the middle, the texts of these federal and state provisions clearly mean exactly the same thing.[11]

Second, and relatedly, the Virginia Supreme Court already has explicitly rejected Defendant's interpretation of Article I, Section 13. In *DiGiacinto v. Rector & Visitors of George Mason Univ.*, 281 Va. 127 (2011), the Court explained that "provisions of the Constitution of Virginia that are *substantively similar* to those in the United States Constitution will be afforded the same meaning." *Id.* at 134 (emphasis added). This was precisely the case for Article I, Section 13 and the Second Amendment. Indeed, the Court *held* "that the protection of the right to bear arms expressed in Article I, § 13 of the Constitution of Virginia is co-extensive with the rights provided by the Second Amendment of the United States Constitution, concerning all issues in the instant case." *Id.* Rather than engage with *DiGiacinto*, Defendant dismisses its "hold[ing]" as "only for that case." Opp. at 15. This Court cannot treat binding precedent so cavalierly, even if the Defendant wishes to cast it aside.

Third, Defendant insists that, even if the state and federal rights are found to be coextensive, the Challenged Statutes survive under *Bruen*. Opp. at 9. But he cannot even properly articulate

[11] Defendant's other contrived differences between the Second Amendment and Article I, Section 13 similarly fail to hold water. Defendant theorizes that, because Article I, Section 13 was placed "inside a section devoted to military matters" (Opp. at 8), it must protect only a collective militia right. Of course, to the extent that federal courts at one point prior to *Heller* considered it a serious question whether the Second Amendment protects an individual right, Article I, Section 13 explicitly states that it does – it protects a right of "the body of the people, trained to arms." Finally, Defendant speculates that Article I, Section 13 differs from the Second Amendment because it was clarified in 1971. But Virginia courts already have rejected this notion. *See DiGiacinto v. Rector & Visitors of George Mason Univ.*, 281 Va. 127, 134 (2011) ("We hold that … Article I, § 13 of the Constitution of Virginia is co-extensive with the rights provided by the Second Amendment of the United States Constitution...."); *Stickley*, 110 Va. Cir. at 316 ("the General Assembly intended the rights guaranteed by the amendment to be co-extensive with the Second Amendment"). Indeed, the whole point of the 1971 amendment was to bring the two texts into harmony. *See* Compl. ¶140 ("Delegate Harrell: This merely puts into the Constitution of Virginia what is in the Constitution of the United States....").

Bruen's standard at the outset. Defendant claims that analysis of Article I, Section 13's plain text "*includ[es]* whether the arms at issue are 'in common use' for self-defense and whether they are 'dangerous and unusual.'" *Id.* (emphasis added). But the Supreme Court never inserted those sorts of qualifiers at the threshold. To the contrary, the constitutional text "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, and "we use history to determine which modern 'arms' are protected...." *Bruen*, 597 U.S. at 28. The Court has never required rights claimants to make any showings as to a firearm's commonality or purported rarity.

Finally, Defendant claims the Challenged Statutes survive under "either" an interest-balancing or historical framework. Opp. at 10. But "balancing" of any purported governmental "interest" in violating constitutional rights is a nonstarter after *Heller* and *Bruen*. *See Heller*, 554 U.S. at 634 ("We know of no other enumerated constitutional right whose core protection has been subjected to a freestanding 'interest-balancing' approach."); *Bruen*, 597 U.S. at 26 ("the traditions of the American people … demand[] our unqualified deference"). Nor do the Challenged Statutes survive under *Bruen*'s framework. Contrary to Defendant's claim that the "regulated arms and accessories are not 'in common use' for lawful self-defense," the Supreme Court has repeatedly stated the exact opposite. *See Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, 605 U.S. 280, 283 (2025) (unanimous opinion) ("'military style' assault weapons … are widely legal and purchased by ordinary consumers"); *id.* at 297 ("The AR-15 is the most popular rifle in the country."); *Staples v. United States*, 511 U.S. 600, 612 (1994) (semi-automatic rifles "traditionally have been widely accepted as lawful"). No matter how many "experts" the Defendant may trot out to cast doubt on the ubiquity of the firearms banned by the Challenged Statutes, there is no

factual question as to the restricted firearms' common use. The Supreme Court has already rejected Defendant's claim nine to zero.

B. Article I, Section 13 Has Always Protected an Individual Right.

Next, Defendant makes the unserious argument that Article I, Section 13's protection of the right of the "*people*" in fact protects no people at all, but rather a "collective, militia-tethered right." Opp. at 10; *see id.* at 11-14. But there is no need to spill ink rebutting the specifics of this misguided argument which no Virginia court – including the Virginia Supreme Court – has ever adopted. The case law speaks for itself, and is binding several times over. *See Heller*, 554 U.S. at 592 (Second Amendment "guarantee[s] the individual right to possess and carry weapons in case of confrontation"); *Bruen*, 597 U.S. at 10 ("the Second and Fourteenth Amendments protect an individual's right"); *DiGiacinto*, 281 Va. at 134 ("Individual self-defense is 'the *central component* of the right itself,'" and "Article I, § 13 … is co-extensive with the rights provided by the Second Amendment of the United States Constitution...."); *Stickley*, 110 Va. Cir. at 320 ("guarantee[ing] an individual's right to bear arms"); *Elhert v. Settle*, 105 Va. Cir. 326, 332 (Lynchburg 2020) ("codifying a pre-existing 'individual right'"); *LaFave v. County of Fairfax*, 2023 Va. Cir. LEXIS 203, at *12 (Fairfax Cnty. June 23, 2023) (Article I, Section 13 "right was to cover individual conduct, and not as the defendant suggests, a mere militia right."). Defendant's "collective right" theory has been dead on arrival for two decades, and deserves no further attention.

Finally, Defendant falls back on *Vlaming*, claiming the Virginia Supreme Court rejected a "lockstep" interpretive approach for analogous rights, and that "*DiGiacinto* does not hold otherwise." Opp. at 14, 15. But again, *Vlaming* concerned "marked[ly]" different religion clauses (302 Va. at 530), and *DiGiacinto* in fact expressly *held* Article I, Section 13 protects an individual right. Indeed, contrary to Defendant's nonsensical claim that "the Court has never squarely held"

coextensive status (Opp. at 15), the Court in fact said "*[w]e hold* that … Article I, § 13 of the Constitution of Virginia is co-extensive with the rights provided by the Second Amendment of the United States Constitution, concerning all issues in the instant case." *DiGiacinto*, 281 Va. at 134 (emphasis added). And if Article I, Section 13 protects an individual right in at least *some* contexts ("all issues" in *DiGiacinto*), it cannot be that Article I, Section 13 protects *only* a collective right to the firearms banned by the Challenged Statutes. The question does not "remain[] open" (Opp. at 15), and Defendant offers no colorable theory to import vague concepts from the Virginia Supreme Court's Article I, Section 16 case while ignoring the explicit holding of the Court's Article I, Section 13 case. To be sure, the *numerous* circuit courts that have rejected Defendant's nonsensical approach "do not bind this Court" (Opp. at 15), but *DiGiacinto* does – which is presumably why those circuit courts ruled the way they did in the first place.[12] This Court should follow that overwhelming weight of binding authority.

C. Plaintiffs' Proposed Course of Conduct Falls Under Article I, Section 13's Plain Text.

Claiming that Plaintiffs lose "under either framework" – *i.e.*, either (i) fidelity to *Bruen* or (ii) his collective militia right informed by judge-empowering interest balancing – Defendant claims that "[s]tep one first requires fixing the relevant timeframe."[13] Opp. at 14. Not so. Rather,

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[12] Defendant claims the *LaFave* circuit court "rejected Plaintiffs' historical-framing argument" (Opp. at 15), but precisely the *opposite* is true. *LaFave* made clear that Article I, Section 13 "cover[s] individual conduct, and not as the defendant suggests, a mere militia right." 2023 Va. Cir. LEXIS 203, at *12.

[13] Without question, the Founding era is the primary time period for historical analysis. *See Bruen*, 597 U.S. at 37 ("19th-century evidence [i]s 'treated as mere confirmation of what the Court thought had already been established'"); *Rahimi*, 602 U.S. at 692 ("'apply[ing] faithfully the balance struck by the founding generation to modern circumstances'"). But, as Plaintiffs explained, "this Court 'need not address this issue'" under Article I, Section 13, "because 'the public understanding of the right to keep and bear arms in both [1776] and [1971] was, for all relevant purposes, the same with respect to' bans on the firearms and magazines at issue here." Compl. ¶162.

what Defendant calls "step one" is nothing more than a simple subject-matter qualifier – are the Challenged Statutes "firearm regulations," or not?[14] There is no dispute that the Challenged Statutes qualify – they restrict Plaintiffs (members of "the people") from acquiring, selling, manufacturing, purchasing, transferring, and publicly carrying (*i.e.*, "keep[ing] and bear[ing]") many of the most popular firearms and magazines in the country ("Arms"). Article I, Section 13 is clearly implicated by Defendant's sweeping *gun ban* which directly burdens the right to keep and bear arms, a right that the Virginia Constitution provides "shall not be infringed." Nevertheless, resisting this simple conclusion, Defendant offers a series of threadbare arguments. None survives cursory review.

1. Firearm Magazines Obviously Are "Arms."

First, Defendant claims that so-called "large-capacity magazines are … not protected 'arms,'" on the theory that Article I, Section 13 does not protect "a box" that is a so-called "firearm accessor[y]." Opp. at 16. On the contrary, the Supreme Court recounted how, at the Founding, the militia's "Arms" included not only a "good Musket or Firelock" and "a sufficient Bayonet," but also "**a Box** therein to contain not less than Twenty-four Cartridges...." *United States v. Miller*, 307 U.S. 174, 180 (1939) (emphasis added). Crump's desired 30-round box *magazine* (Compl. Ex. C ¶17) is the nothing more than the obvious lineal descendent of a cartridge box. Indeed, adopting Defendant's strained theory that the term "Arms" does not include magazines has no limit – the Commonwealth could ban all firearms with magazines, leaving only the "'single-shot, muzzle-loaded' firearms" available at the Founding. Of course, that is not the law. *Rahimi*, 602 U.S. at 692 ("applying the protections of the right only to muskets and sabers" would be

[14] *Rahimi*, 602 U.S. at 689 ("when a firearm regulation is challenged … the Government must show that the restriction "is consistent with … historical tradition'").

"mistaken"); *Heller*, 554 U.S. at 582 ("the argument … that only those arms in existence in the 18th century are protected by the Second Amendment" "border[s] on the frivolous").

Defendant's remaining two points are unavailing. *First*, he claims that Virginia has "long regulated how many rounds a firearm may fire without reloading...." Opp. at 17. That is not true. Defendant's 1934 restriction on "firearms holding more than seven rounds" applied only to fully automatic *machineguns* not at issue in this case. *See* 1934 Va. Acts 137, 137-39.[15] Likewise, Defendant's 1962 restriction on shotgun capacity while *hunting* plainly left undisturbed the importation, sale, manufacture, purchase, barter, transfer, and public carry at issue here. Indeed, to this day, virtually every state places limits on capacity while hunting, but that does not even begin to support a "large capacity" magazine ban. Finally, whether or not "large-capacity magazines were … in common civilian use in 1971" (Opp. at 17) is irrelevant to whether they are *today* (and they obviously are). *See Bruen*, 597 U.S. at 47 (protecting "weapons that are unquestionably in common use today").

Second and finally, Defendant claims three federal court opinions holding "large-capacity magazines are not 'arms'" should be "persuasive" to this Court. Opp. at 17. They are not. Those opinions failed to apply the Supreme Court's clear guidance that the "general definition" of "Arms" "covers modern instruments that *facilitate* armed self-defense" (*Bruen*, 597 U.S. at 28, emphasis added), and "extends, prima facie, to all instruments that constitute bearable arms...." *Heller*, 554 U.S. at 582. Magazines obviously "facilitate" self-defense, and they are "bearable" instruments that can be worn or carried in the hand. *See id.* at 584 ("'wear, bear, or carry'"). Nothing more is needed to clear Article I, Section 13's plain text.

[15] https://tinyurl.com/yhp4hn7m ("Act to Define the Term 'Machine Gun'; to Declare the Use and Possession of a Machine Gun for Certain Purposes a Crime and to Prescribe the Punishment Therefor").

2. "Assault Firearms" and "Large-Capacity Magazines" Are in "Common Use."

Second, Defendant claims that "large capacity magazines are not in 'common use' today for lawful self-defense," something his allegedly "undisputed evidence" purportedly "shows." Opp. at 17 (failing to actually point to any such "evidence"). But numerous courts have found otherwise. Compl. ¶17 (citations explaining that such magazines are "standard" in today's firearms and "number[] in the hundreds of millions"). Such magazines are ubiquitous among civilians, law enforcement, and military nationwide – on about the same level of ubiquity as baseball cards. If they are not in "common use," it is hard to see what would qualify.

Third, Defendant claims that the Second Amendment – the right Defendant claims is definitely not at issue here – centers on self-defense, and does not protect what are purportedly military-grade firearms. Opp. at 18. But the "assault firearms" banned by the Challenged Statutes are not military firearms – no modern military fields a semi-automatic rifle as its standard battle weapon. *See Barnett v. Raoul*, 756 F. Supp. 3d 564, 599 (S.D. Ill. 2024) ("'The AR-15 is a civilian, not military, weapon. No army in the world uses a service rifle that is only semiautomatic.'"). Apparently recognizing that reality, Defendant theorizes that the civilian AR-15 is *basically the same thing* as the military M16 – aside from the fully automatic fire, that is. Opp. at 18. No matter, Defendant says, because "[a] large-capacity magazine erases one of the few meaningful differences that remain – rate of fire...." *Id.* But that is nonsense. A firearm's magazine does nothing to change a firearm's mechanical (cyclic) rate of fire.[16] Rather, it simply determines how long a shooter can fire before reloading – a process that takes a couple of seconds for a trained shooter.[17]

[16] *See* https://tinyurl.com/34hbrz8b.
[17] *See* https://tinyurl.com/4j67w2by.

Fourth, Defendant concludes that firearms like the AR-15 are "weapons of war, not instruments of personal defense." Opp. at 18. Tell that to the millions of law enforcement officers who carry one every day to 'protect and serve.'[18] And the tens of millions of Americans who keep one at home for self-defense. *Snope v. Brown*, 145 S. Ct. 1534, 1536 (2025) (Thomas, J., dissenting from denial of certiorari) ("Tens of millions of Americans own AR-15s, and the 'overwhelming majority' of them 'do so for lawful purposes, including self-defense and target shooting.'"). As usual, Defendant's claims are fanciful.

Defendant next claims that the cartridges used by so-called "assault firearms" have excessive "muzzle velocity, range, and lethality." Opp. at 18. Again, nothing could be further from the truth. The sort of carbines banned by the Challenged Statutes – the AR-15, AK-47, etc. – generally utilize *intermediate*-type calibers like .223/5.56 and 7.62x39. These calibers compromise "velocity, range, and lethality" for benefits like magazine capacity, recoil mitigation, and weight reduction. Defendant seems entirely unaware that many rifles which lack banned features remain legal under the Challenged Statutes, yet are far more powerful and accurate than banned "assault firearms." For example, the semi-automatic M1 Garand – a quintessential military rifle from World War II – remains legal, even though its .30-06 cartridge delivers comparable bullet velocity and more than double the kinetic energy of the M16's 5.56 cartridge, while maintaining a much greater range than the 5.56. The irrational and sensationalistic rhetoric of Defendant's experts, who fail even to understand how so-called "assault firearms" operate, may illustrate how many laws are passed, but should never form the basis for how cases are decided.

[18] *See* https://tinyurl.com/5n6bdkw2 ("The AR-15 rifle in its many forms is the default long gun of law enforcement.").

Fifth, Defendant claims that "assault firearms" are "rarely … used defensively" and so they can be banned. Opp. at 19. Of course, this argument asks this Court to return to the days of interest balancing. However, Constitutional rights do not rise or fall on the data sets of anti-gun "experts." Defendant cannot, for example, ban the King James Bible simply on the theory that most Christians read the NIV. But even considering his data, Defendant cherry-picks and fudges the numbers. For example, he examined only defensive uses against "active-shooter incidents"[19] – events which generally happen in public and are stopped by defenders with concealed-carry handguns – as compared to *all defensive uses*, most of which occur at home and many of which involve rifles.[20] Defendant then claims that "real-world" defenders only "fired 2.2 shots on average" – as if the right to keep and bear arms must be centered on a rolling "average." Defendant claims that "none fired more than ten." Opp. at 19. But that is demonstrably false – more than one such incident has been captured on video.[21] Defendant's "experts" simply cannot be trusted even to accurately present the facts.

Sixth, Defendant resists that there are tens of millions of "assault firearms" in circulation among law-abiding gun owners. Maligning Plaintiffs for "offer[ing] no expert evidence" to support their claim, Defendant objects to Plaintiffs' reliance on "two U.S. Supreme Court opinions." Opp. at 19; *see* TRO at 16 (collecting cases) ("20 to 30 million AR-15s"). Rather than relying on the Supreme Court, Defendant urges, this Court should instead rely on the numbers of his "experts." But Defendant's experts *have no numbers*, claiming that the "Commonwealth's evidence establishes that '*the number* of assault firearms in circulation in the United States *is*

[19] The defensive use Defendant does acknowledge (Def.'s Ex. 1 at 56 n.113) was by Stephen Willeford – an American hero who now works for Plaintiff GOA.

[20] https://tinyurl.com/3yyavrwr; https://youtu.be/GfVePZrecJc; https://tinyurl.com/4w2pst9p; https://tinyurl.com/45eb2vp3.

[21] https://youtu.be/pO5s5-231RQ; https://tinyurl.com/mtsecmyw.

unknown.'"[22] Opp. at 19 (emphasis added). In other words, Defendant suggests this Court should replace the Supreme Court's unequivocal statements with Defendant's 'we don't know.' This Court should not oblige.[23]

3. Defendant Has No Idea What "Dangerous and Unusual" Means.

Defendant claims that the restricted firearms and magazines are "dangerous and unusual," which apparently means they "may be banned" altogether. Opp. at 20. But Defendant never defines those terms. To the contrary, historical regulations of "dangerous and/or unusual weapons" regulated only certain *conduct* in *public*, not specific types of weapons or "military firepower" (*id.* at 21). Such regulations therefore "provide no justification for laws restricting … weapons that are unquestionably in common use today." *Bruen*, 597 U.S. at 47. In fact, the U.S. Supreme Court has expressly noted that regulations of "dangerous and/or unusual weapons" reached only *nefarious public carry – i.e.*, criminal brandishing – and not mere ownership, acquisition, and peaceable carry at issue here. *See id.*

Consider the original usage of the term "dangerous and unusual." When *Heller* referenced the "historical tradition of prohibiting the carrying of 'dangerous and unusual weapons'" (554 U.S. at 627), it cited Sir William Blackstone's Commentaries on the Laws of England. Importantly, Blackstone categorized this prohibition as an "Offence[] Against the Public Peace."[24] Thus, it

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[22] Paradoxically, after claiming to have no idea *how many* "assault firearms" are owned by Americans – just that it's *definitely* not tens of millions – Defendant then purports to know precisely *which* Americans own the unknowable firearms. Opp. at 20 ("Assault firearms and LCMs … are concentrated in a tiny fraction of owners"); *id.* ("owned by a niche of Americans"). In other words, Defendant's theory is 'heads I win, tails you lose.' This is unserious gobbledygook.

[23] Nor is the "Fourth Circuit's reasoning" persuasive here. Opp. at 20. Rather than limiting constitutional protections only to weapons "[]proportionate" for "self-preservation" at the outset (*id.*), the Supreme Court has instructed that "we use history to determine which modern 'arms' are protected" – not interest balancing. *Bruen*, 597 U.S. at 28.

[24] 4 William Blackstone, Commentaries on the Laws of England 142 (John Taylor Coleridge ed., 1825).

shared a common theme with the twelve other common-law offenses with which it was codified. All were "either … an actual breach of the peace; or constructively so, by tending to make others break it." *Id.* The relevant text reads:

> The offence of riding or going armed, with dangerous or unusual weapons, is a crime against the public peace, by terrifying the good people of the land; and is particularly prohibited by the statute of Northampton.... [*Id.* at 148-49.]

In other words, this sort of regulation criminalized nothing more than "the common-law offense[] of 'affray' or going armed 'to the terror of the people'...." *Bruen*, 597 U.S. at 50. Affray laws "regulated a niche subset of Second Amendment-protected activity" – not all public carry. *Rahimi*, 602 U.S. at 770 (Thomas, J., dissenting). Indeed, "there is no evidence indicating that these common-law limitations impaired the right of the general population to peaceable public carry." *Bruen*, 597 U.S. at 51. Thus, the common-law offense required something *more* than the public carry of a "dangerous or unusual weapon" in order for criminal liability to attach. The law required that the weapon not only be carried, and not even just that it be present in public ("riding or going armed"), but *also* that its presence breach "the public peace" and cause "terr[or]." And obviously, for this to happen, such weapon would have to be carried openly, visibly, and aggressively, with witnesses to see it.

Thus, historical prohibitions against openly brandishing or discharging weapons to the terror of onlookers – and in breach of the peace – are no analogues for the Challenged Statutes' flat ban on the acquisition, disposition, or peaceable public carry of the nation's most popular firearms and magazines. No one could be terrorized, and no peace could be broken, were Plaintiffs

to purchase and carry the *same* firearms, the *same* way, in the *same* places as they already do every day.[25]

D. The Challenged Statutes Are Ahistorical.

Defendant claims the Challenged Statutes are constitutional "under either framework" – either (i) what Defendant calls "the Virginia methodology" (repudiated judicial interest balancing) or (ii) the "federal *Bruen* framework." Opp. at 22. Under his preferred interest balancing, Defendant asserts the Challenged Statutes are "reasonably fitted to the Commonwealth's substantial public-safety interest and narrowly focused on the harms the General Assembly identified." *Id.* But Plaintiffs need not dignify this sort of "judge-empowering 'interest-balancing'" (*Bruen*, 597 U.S. at 22) with a substantive response, because this approach has been flatly rejected in the context of the right to keep and bear arms. Indeed, the Commonwealth has no legitimate interest in violating an enumerated right in the name of 'public safety,' because "[t]he right to keep and bear arms … is not the only constitutional right that has controversial public safety implications." *McDonald v. City of Chicago*, 561 U.S. 742, 783 (2010) (plurality opinion). To the contrary, "[t]o justify its regulation, the government may not simply posit that the regulation promotes an important interest. Rather, the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation." *Bruen*, 597 U.S. at 17.

And with respect to the historical tradition – or in this case, a lack thereof – Defendant has failed to bear his burden. Perhaps recognizing that overwhelmingly popular weapons and

[25] Nor can all "assault firearms" be "dangerous and/or unusual weapons" even under Defendant's erroneous formulation. Recall that the Challenged Statutes ban even certain *handguns* (Compl. Ex. C ¶15 ("KelTec PR-5.7 pistol")), and handguns are "unquestionably in common use today." *Bruen*, 597 U.S. at 47.

magazines were never banned during any relevant historical time period, Defendant begins the only way he can – with all the expected catchphrases. Thus, because the Challenged Statutes allegedly address "an 'unprecedented societal concern' driven by" so-called "'dramatic technological changes'" – an alleged "epidemic" of "mass shootings" – Defendant seeks to dilute *Bruen*'s rigorous inquiry into something else entirely. Opp. at 22. But Defendant's historical showing appeals to "such a high level of generality that it waters down the right." *Rahimi*, 602 U.S. at 740 (Barrett, J., concurring). No amount of written appeals to panic and hysterics change the operative fact that the Challenged Statutes are historically unprecedented and entirely unconstitutional.

1. "Assault Firearms" and "Large-Capacity Magazines" Are Nothing New."

At the outset, Defendant urges a loosening in analytical stringency so that this Court can "engage in 'a broader search for historical analogies.'" Opp. at 23. Translation: the Challenged Statutes have no "distinctly similar" historical precursors (*Bruen*, 597 U.S. at 26), and so Defendant can only appeal to the broadest of historical principles – like the notoriously nonspecific "governmental interest" of protecting "public safety." Opp. at 24. But if that is the standard which justifies modern firearm regulations, then all gun control would be permissible. "What a marvelous [Article I, Section 13] loophole!" *United States v. Hicks*, 649 F. Supp. 3d 357, 360 (W.D. Tex. 2023), *rev'd on other grounds*, 2025 U.S. App. LEXIS 18297 (5th Cir. July 23, 2025).

Defendant's methodological argument fails several times over. *First*, the Challenged Statutes do not address a "dramatic technological change." Opp. at 23. As Defendant admits, AR-15s date "to the late 1950s," nearly three-quarters of a century ago. *Id.* That is about as "modern" and "dramatic[ally]" new as a Chevrolet Bel Air.[26] Yet at no point from the AR-15's introduction

[26] *See* https://en.wikipedia.org/wiki/Chevrolet_Bel_Air.

through the late 1980s did any American jurisdiction ban the rifle. *See* Compl. ¶164 (citing the 1989 "Roberti-Roos Assault Weapons Control Act in California" as the first). Defendant's hysterics fall flat.

Second, the semi-automatic AR-15 was not "created for military use." Opp. at 23. In fact, "'[n]o military in the world uses a service rifle that is semiautomatic only.'" *Barnett*, 756 F. Supp. 3d at 622. And contrary to Defendant's claim, the *fully automatic* AR-15 was repeatedly *rejected* for American military use until Secretary of Defense Robert McNamara overruled his subordinates and ordered its later adoption as the M16.[27]

Third, the natural progression of firearms technology does not change the calculus of enumerated rights. No other constitutional right works that way. Indeed, technology has developed in all other areas of life – much more dramatically than in the firearms industry – and yet no one questions constitutional protection in those modern contexts. Consider the cell phone – an item that would appear to the Framers to be an utterly alien box of unfathomable wizardry. Consider all that would have to be explained at the threshold just to make the cell phone make sense – electricity, batteries, magnetism, radio waves, semiconductors, coding, *the internet*, rockets, fossil fuels, and satellites in orbit. And each of those would require further explanation. Even so, no one at the Founding would have claimed that an "X" post using a VPN warrants *less* constitutional protection than an anonymous pamphlet stamped out on a printing press. To the contrary, "the First Amendment protects modern forms of communications...." *Bruen*, 597 U.S. at 28.

In contrast, modern firearms would be immediately recognizable to the Framers. Although guns have improved substantially with the invention of the cartridge, box magazine, modern

[27] *See* https://tinyurl.com/49smt6yd; https://youtu.be/3dIsy3sZI2Y.

optics, and semi-automatic function, they are still at their core the same – mechanical instruments made from metal and wood (and now plastic), held out in the hands or aimed from the shoulder by looking down sights, firing projectiles through the air using chemical propellants. No doubt the Framers would be *impressed* with modern firearms – but not *dumfounded* – because modern firearms are the product of a logical, entirely predictable development. Just because firearms are now *better* at what they do does not mean they receive *lesser* constitutional protection. Indeed, "[w]e do not interpret constitutional rights that way. … [Article I, Section 13] extends" to firearms "that were not in existence at the time of the founding." *Heller*, 554 U.S. at 582.

Fourth, even if Defendant were correct that "assault firearms" and "large-capacity magazines" were designed for the military, that changes nothing. *Heller* already explained that Founding-era "weapons used by militiamen and weapons used in defense of person and home were *one and the same*." 554 U.S. at 625 (emphasis added). That makes obvious sense when one considers what sorts of weapons the Framers *intended* the Constitution to protect, first and foremost. James Madison, for example, famously "doubted whether a militia thus circumstanced could ever be conquered by … regular troops."[28] Alexander Hamilton likewise contemplated "a large body of citizens, little if at all inferior … in discipline and the use of arms" to a standing army.[29] And Tench Coxe explained that "Congress have no power to disarm the militia. Their swords, and *every other terrible implement of the soldier, are the birth-right of an American*."[30] This understanding persisted well into the late 19th century. Writing in an 1897 treatise, Henry Campbell Black, author of the eponymous Black's Law Dictionary, explained that "[t]he 'arms' here meant are those of a soldier. … The citizen has at all times the right to keep

[28] The Federalist No. 46, at 299 (James Madison) (Clinton Rossiter ed., 1961).
[29] The Federalist No. 29, *supra*, at 185 (Alexander Hamilton).
[30] Tench Coxe, *A Pennsylvanian, No. 3*, Pa. Gazette, Feb. 20, 1788, at 2 (emphasis added).

arms of modern warfare."[31] Yet despite this uniform historical understanding, Defendant asks this Court to find that Article I, Section 13 does *not* apply to "new circumstances." *Bruen*, 597 U.S. at 28. That "would be as mistaken as applying the protections of the right only to muskets and sabers." *Rahimi*, 602 U.S. at 692.

Fifth, the supposed advent of "unprecedented … mass shootings" gets Defendant nowhere. Opp. at 24. He claims these shootings were "'likely unimaginable at the founding,'"[32] yet concedes that Founding-era "homicide rates were exceptionally low" in general. *Id.* at 23. Of course, that is likely because the Framers dealt with violent crime far differently than today's legislatures and governors who enact so-called "assault weapons bans," disarming the law-abiding, while setting violent criminals free.[33] *Cf. Bruen*, 597 U.S. at 26 (law has no historical justification when "earlier generations addressed the societal problem … through materially different means").

Undaunted, Defendant generalizes to "homicides … committed with a gun." Opp. at 23. Thus, Defendant's actual point is that *crime* has increased since the Founding. But that exact "societal issue" – "firearm violence" using modern, semi-automatic weapons – is precisely what *Heller* and *Bruen* already addressed. *Bruen*, 597 U.S. at 27. And in those cases, "the historical analogies … [we]re relatively simple to draw," and did *not* "implicat[e] unprecedented societal concerns or dramatic technological changes." *Id.* (contrasting *Heller* and *Bruen* with other cases that "may require a more nuanced approach"). In other words, this case calls for *Heller* and

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[31] Henry Campbell Black, Handbook of American Constitutional Law § 203 (2d ed. 1897).

[32] Of course, Howard Unruh used a pistol with a low capacity magazine to murder 13 during his "Walk of Death," several years before the AR-15 was even invented. *See* https://tinyurl.com/yc4wwcnv. And even years after the AR-15's invention, Charles Whitman gunned down dozens from a University of Texas tower using a bolt-action hunting rifle. *See* https://tinyurl.com/4bszh6rd. Nor is mass violence a product of the modern age – in 1780, Barnett Davenport killed five members of a family in their New Milford, Connecticut home. *See* https://tinyurl.com/yuxwts2r.

[33] *See, e.g.*, https://tinyurl.com/y7476rmt.

Bruen's approach – not regurgitated appeals to squishy notions like 'public safety' that the Supreme Court has repeatedly rejected.

Nor do bans on "assault firearms" and "large-capacity magazines" even work. Contrary to Defendant's claim that the 1994 "federal ban on assault weapons slowed the trend [of shootings] until it expired in 2004" (Opp. at 24), study after study has concluded otherwise.[34] Moreover, the firearms that the Challenged Statutes ban are used in, at best, a small minority of so-called "mass shootings." *See* Report and Declaration of Lucy P. Allen ¶¶42-43, *Barnett v. Raoul*, No. 3:23-cv-00209-SPM (S.D. Ill. May 10, 2024), ECF No. 185-8 (20% of mass shootings reviewed involved "assault weapons," while 41% involved "large capacity magazines").[35] And when it comes to crimes more generally, the FBI reported that, in 2019, only about 2.6 percent of murders were committed with a rifle of any type, well below the numbers for knives, blunt objects, and even "hands, fists, and feet."[36] In fact, handguns – the "quintessential self-defense weapon" that *Heller* already determined is protected (554 U.S. at 629) – were used 17.5 times as frequently as rifles of any kind.

Ultimately, Defendant's hazy appeals to the progression of technology and the ubiquitous problems of violent crime are inapposite. Article I, Section 13 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 to use arms' for self-defense." *Bruen*, 597 U.S. at 26. Enumerated rights do not turn on sociological studies.

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[34] *See* https://tinyurl.com/3vjzs8jv.
[35] https://tinyurl.com/2rj234ff.
[36] https://tinyurl.com/4d5hs6jp.

2. Defendant's Smattering of Disparate Analogues Does Not Show a "Historical Tradition" of Anything.

Defendant finally attempts to bear his historical burden, claiming a tradition of regulating weapons "in the interest of public safety." Opp. at 24. Of course, that reads history at "such a high level of generality that it waters down the right." *Rahimi*, 602 U.S. at 740 (Barrett, J., concurring). Indeed, none of Defendant's purported analogues comes even close to resembling the Challenged Statutes' unprecedented ban on ubiquitous firearms and magazines.

Colonial "Trap Gun" Laws. Defendant first points to colonial restrictions on "trap guns," which fired "remotely when a string or wire was tripped." Opp. at 25. But these laws were not *gun bans* – like the Challenged Statutes. Rather, Defendant's "trap gun" laws merely regulated a *way of using guns*,[37] and were often enacted as anti-poaching measures. *See* Def.'s Ex. 3 ¶108 (emphasis added) (1670 Massachusetts restricting trap guns from "hurting man *or beast*"). In fact, Defendant's 1751 New Jersey law banned "set[ting] any Gun or Guns, or plant[ing] sharp stakes, *in Order to kill Deer, or any other wild Beasts*." *Id.* ¶109 (emphasis added). No one would claim that this law restricting certain *activities* was in fact an 'assault stakes' ban. Thus, Defendant's "trap gun" laws accomplished an entirely different purpose – banning "a most dangerous *Method* of setting Guns" (*id.* ¶110, emphasis added) – for an entirely different reason – regulating hunting and boobytraps. They therefore fail both *Bruen*'s "how" and "why." *See* 597 U.S. at 29.

Nineteenth-Century Bowie Knife Laws. Next, *skipping the Founding era entirely*, Defendant points to 19th-century restrictions on "the possession or concealed carry" of Bowie knives. Opp. at 25. But Defendant's reliance on these regulations fails for at least three reasons. *First*, Defendant's use of the disjunctive "or" ("possesion *or* concealed carry") bears

[37] *Cf. Rahimi*, 602 U.S. at 691 (noting Founding-era "restrictions on gun use by drunken New Year's Eve revelers").

emphasis – these knife regulations never formed a consensus with respect to acquisition, disposition, *or* public carry. As Defendant's own materials reveal, the vast majority of jurisdictions to have regulated Bowie knives did so only as to concealed carry, leaving open the option to *open carry* and largely undisturbed the ability to *purchase and sell*. *See* Def.'s Ex. E. The same cannot be said of the Challenged Statutes, which operate with a far more restrictive "how." These outlier regulations cannot sustain Defendant's sweeping ban here. *Second*, these "'belated innovations of the mid- to late-19th-century … come too late to provide insight into the meaning'" of Article I, Section 13. *Bruen*, 597 U.S. at 36-37. While Defendant notes that Bowie knife regulations arose in the 1830s (Def.'s Ex. 3 ¶92), bladed weapons were nothing new. *See Rahimi*, 602 U.S. at 692 (noting Founding-era "sabers"). Defendant does not attempt to ground his 19th-century knife regulations in a corresponding *Founding-era* tradition of restricting the acquisition, disposition, or public carry of knives. Accordingly, they are temporal outliers, and they shed no light on what the Framers understood Article I, Section 13 to mean. *Third*, and perhaps most obviously, *this is not a knife case*. By appealing to ethereal historical "principles" like "public safety," Defendant loses sight of his analytical task: proffering relevant Founding-era restrictions on the acquisition, disposition, and public carry of widely popular *firearms*, to the extent those restrictions ever existed. Absent such a historical showing, neither *Heller*, *Bruen*, nor *Rahimi* authorize courts to uphold ahistorical firearm regulations using the 'next best thing.' Bowie knives are nothing like firearms and magazines.

Nineteenth-Century Revolver Laws. Next, Defendant cites 19th-century restrictions on the "concealed carry of revolvers and other concealable pistols," and notes that a minority of states went so far as to "'bar[] possession of these weapons outright.'" Opp. at 25. Addressing the latter regulations first, a flat ban on the possession of handguns is a constitutional nonstarter under *Heller*

and *Bruen*, and those historical outliers justify nothing. Moreover, 19th-century restrictions on the public carry of revolvers and other pistols often contained *exceptions* for specific models. Consider Defendant's citation to an 1881 Arkansas law that banned the carry of "any pistol of any kind whatever, *except such pistols as are used in the army or navy of the United States*." Def.'s Ex. C at 10 (emphasis added). Not only does this exception mean the law provides *no support* for Defendant's proposition – that 'dangerous' and 'military' weapons may be banned in the name of 'public safety' – but it also reveals something far more troubling.

Indeed, so-called "Army and Navy" pistol laws were thinly veiled attempts by "white supremacist legislature[s]" to prevent newly freed slaves from owning firearms after the Civil War.[38] Indeed, "ex-Confederate soldiers already had their high-quality Army and Navy guns. But cash-poor freedmen could barely afford lower-cost, simpler firearms not of the Army and Navy quality." *Id.* It goes without saying that racist gun control laws are invalid analogues, because a historical analogue must "regulate[] arms-bearing for a permissible reason." *Rahimi*, 602 U.S. at 692. And as several Justices recently made clear during oral argument in *Wolford v. Lopez*, racist and discriminatory laws are as far from having a "permissible reason" as it gets. Indeed, Justice Kavanaugh explained that "we flatly reject[] … historical example[s]" that "were rooted in racial prejudice."[39] Such history is "inadmissible to … somehow justify[] an exception to the constitutional right." *Id.* at 101:20-22. In other words, "courts must exercise care to rely only on the history that the Constitution actually incorporated and not on the history that the Constitution left behind." *Rahimi*, 602 U.S. at 723 (Kavanaugh, J., concurring).

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[38] David B. Kopel, *The Racist Roots of Gun Control*, Encounter Books (Feb. 23, 2018), https://tinyurl.com/4njbujrk.

[39] Transcript of Oral Argument at 101:12-15, *Wolford v. Lopez*, No. 24-1046 (U.S. Jan. 20, 2026), https://tinyurl.com/3jzdthsv.

Twentieth-Century "Machinegun" Restrictions. Defendant next attempts a historical sleight of hand. He points to laws "restrict[ing] semi-automatic weapons in the 1920s and 1930s," but never quotes any of their texts – perhaps for good reason. Opp. at 25. Rather than restricting *actual* semi-automatic firearms as we understand the term today, these laws restricted *machineguns*, rapid-firing (and strictly federally regulated) weapons that are *not at issue* here. For instance, Defendant collects a 1935 Arkansas law "Relating to *Machine Guns*, and to Make Uniform the Law With Reference Thereto." Def.'s Ex. B at 2 (emphasis added). That law defined "Machine Gun" to mean "a weapon of any description … from which more than five shots or bullets may be rapidly, or automatically, or semi-automatically discharged from a magazine, *by a single function of the firing device*." *Id.* (emphasis added). Thus, rather than reaching true semi-automatic firearms that discharge only *once* per single function of the trigger, these ineptly written laws reached something else entirely. And in any case, "20th-century evidence … does not provide insight into the meaning of [Article I, Section 13] when it contradicts earlier evidence." *Bruen*, 597 U.S. at 66 n.28.

Twentieth-Century Magazine Restrictions. Defendant's reliance on latecoming magazine restrictions is similarly misleading. For example, Defendant claims Virginia "imposed a seven-round limit in 1934." Opp. at 26. But Defendant's citation – 1934 Va. Acts ch. 137 – is to Virginia's own *machinegun* act.[40] Rather than restricting *magazine capacity* to seven rounds, the Virginia law defined *machinegun* to include firearms capable of rapidly discharging seven rounds "by a single function of the firing device." *Id.* And once again, 20th-century evidence sheds no light on original meaning. *See Bruen*, 597 U.S. at 66 n.28.

[40] *See* https://tinyurl.com/yhp4hn7m ("Act to Define the Term 'Machine Gun'; to Declare the Use and Possession of a Machine Gun for Certain Purposes a Crime and to Prescribe the Punishment Therefor").

Virginia's Nonexistent "Tradition." Finally, Defendant turns to Virginia-specific laws, but they each fail for the reasons already discussed. Opp. at 26. Defendant's 1934 "semi-automatic gun restriction[]" was actually a *machinegun* law. *Id.* Defendant's 1962 "shotgun magazine-capacity limit *for hunting*" was limited in scope and purpose, and it left undisturbed the acquisition, disposition, and public carry of firearms generally. *Id.* (emphasis added). Defendant's 1966 "anti-trap gun law" restricted the *way* a firearm could be used, but not firearms themselves. *Id.* And Defendant's "first laws" from 1786 and 1838 restricting "public carrying of arms" and "concealed dangerous weapons," respectively, are a blatant mischaracterization. *Id.* The 1786 law did not regulate "public carrying of arms," but rather was "An Act forbidding and punishing Affrays." *See* Def.'s Ex. 3 ¶83 n.167. Of course, as *Bruen* explains, "there is no evidence indicating that these common-law limitations impaired the right of the general population to peaceable public carry." 597 U.S. at 51.

3. The Challenged Statutes Are Not "Relevantly Similar" to Defendant's Paltry Historical Record.

Arguing that the Challenged Statutes are "relevantly similar" to the jumble of inapposite "historical regulations" that he identified, Defendant claims that "SB749 burdens self-defense little, if at all...." Opp. at 27. But again, this is precisely the sort of analysis *Bruen* rejected. 597 U.S. at 18 (rejecting the two-step inquiry that "analyze[d] … the severity of the law's burden on that right"). Defendant theorizes that, even though the Challenged Statutes ban the most popular firearms and magazines in America, "SB749 leaves Virginians free to acquire and use the vast range of firearms that fall outside its definition," and thus is a "'slight' burden." Opp. at 27. But *Heller* rejected this excuse as well, noting that "[i]t is no answer to say … that it is permissible to ban the possession of [one category of firearm] so long as the possession of other firearms … is allowed." 554 U.S. at 629. Finally, Defendant claims that the firearms banned by the Challenged

Statutes are "susceptible to criminal misuse." Opp. at 27. Yet once again, the Supreme Court says differently – "'military style' assault weapons … are widely legal and purchased by ordinary consumers." *Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, 605 U.S. 280, 283 (2025) (unanimous opinion). Literally every single one of Defendant's arguments has already been repudiated by this nation's highest judicial authority.

4. The "Virginia Methodology" Is Defendant's Fairytale Construct, Not a Real-World Legal Test.

Arguing that the Challenged Statutes meet "the Virginia methodology" – a heretofore unknown legal framework that Defendant cut from whole cloth – Defendant asserts a "*compelling* … public safety interest" in taking away Americans' most popular firearms and magazines. Opp. at 28-29. *But see Bruen*, 597 U.S. at 24 ("the government may not simply posit that the regulation promotes an important interest"); *Heller*, 554 U.S. at 634 ("The very enumeration of the right takes out of the hands of government … the power to decide on a case-by-case basis whether the right is really worth insisting upon."). Undaunted, Defendant surmises that "even fundamental rights may yield to limiting principles grounded in public safety, peace, and order." Opp. at 28. Of course, that sort of unprincipled, limitless, government-knows-best, paternalistic drivel is precisely the reason constitutional rights were enumerated in the first place. As Justice Robert H. Jackson famously wrote, "[t]he very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials, and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections." *West Virginia State Board of Education v. Barnette*, 319 U.S. 624, 638 (1943). Defendant's ridiculous claims

not only are at odds with every Article I, Section 13 and Second Amendment precedent – they defy our very form of government.

III. The Balance of the Equities Tilts Markedly in Plaintiffs' Favor.

Defendant offers this Court nothing to support rejecting black-letter law – if Plaintiffs are likely to succeed on the merits, meaning their rights will be violated, then their irreparable harm flows automatically. *See Elrod v. Burns*, 427 U.S. 347, 373 (1976) ("[t]he loss of [constitutional] freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury"). And in such a case, there can be no governmental interest in violating enumerated rights by uttering vague incantations about 'public safety' (Opp. at 30). *See Am. Civil Liberties Union v. Ashcroft*, 322 F.3d 240, 247 (3d Cir. 2003). Rather, it is always in the public interest that the government not violate constitutional rights. *See Jackson Women's Health Org. v. Currier*, 760 F.3d 448, 458 n.9 (5th Cir. 2014).

CONCLUSION

For the foregoing reasons, Plaintiffs' Motion should be granted.

Respectfully submitted,

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