

[Office Letterhead]

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Re: Prosecution Decision regarding Violations of Unconstitutional New Restrictions on So-Called “Assault Firearms” and “Large Capacity Ammunition Feeding Devices”

To Whom It May Concern:

I write in my capacity as the Commonwealth’s Attorney for [Jurisdiction] to explain how this Office will exercise its prosecutorial discretion with respect to alleged violations of Virginia’s newly enacted restrictions on: (1) so-called semiautomatic “assault firearms,” including the ubiquitous AR-15 rifle and various popular rifles, handguns, and shotguns; (2) so-called “large capacity ammunition feeding devices” with capacities in excess of 15 rounds of ammunition, and (3) the public carry of “assault firearms” (collectively, the “New Restrictions”), scheduled to go into effect on July 1, 2026.<sup>1</sup> This letter is intended to provide transparency and guidance to law enforcement and the public regarding charging referrals and prosecutorial decisionmaking.

To that end, I am announcing that my Office **will not enforce** the New Restrictions within this jurisdiction. A number of lawsuits have been filed challenging the constitutionality of some or all of these laws in Virginia and federal courts, and some or all of the New Restrictions may be enjoined prior to July 1, 2026, or thereafter. *See, e.g., Crump v. Katz*, No. CL26-201 (Lancaster Cnty. Cir. Ct.);<sup>2</sup> *Santolla v. Katz*, No. CL26-1139 (Washington Cnty. Cir. Ct.);<sup>3</sup> *Curtis v. Katz*, No. CL26-2454 (Spotsylvania Cnty. Cir. Ct.); *Black v. Hook*, No. CL26-241 (Fauquier Cnty. Cir. Ct.);<sup>4</sup> *McDonald v. Katz*, No. 1:26-cv-01305 (E.D. Va.).<sup>5</sup>

In addition to the New Restrictions’ uncertain future, I have independently determined that the New Restrictions are unenforceable because they violate not only the Second Amendment to the United States Constitution, as incorporated against the Commonwealth of Virginia via the Fourteenth Amendment and applied under the Privileges & Immunities Clause, but also violate Article I, Section 13 of the Virginia Constitution. Indeed, the right of Virginians to keep and bear arms “shall not be infringed.” Rather than violating my oath to the U.S. and Virginia Constitutions, I intend to keep it.

Commonwealth’s Attorneys are vested with broad discretion to decide whether to initiate and pursue criminal prosecutions for most criminal charges, including misdemeanor-level weapons-related violations. *See, e.g., Va. Code § 15.2-1627(B)* (providing that Commonwealth’s

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<sup>1</sup> *See 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, 19.2-386.28.*

<sup>2</sup> <https://foundation.gunowners.org/wp-content/uploads/Complaint-CrumpvKatz.pdf>.

<sup>3</sup> <https://www.courthousenews.com/wp-content/uploads/2026/05/santolla-v-katz.pdf>.

<sup>4</sup> <https://nssfpdf.s3.us-east-1.amazonaws.com/Complaint+Black+v.+Hook.pdf>.

<sup>5</sup> <https://shared.nrapvf.org/sharedmedia/1512189/20260514-va-complaint.pdf>.

Attorneys “may in [their] discretion, prosecute Class 1, 2 and 3 misdemeanors”). That discretion includes, at a minimum, consideration of constitutional authority, evidentiary sufficiency, the interests of justice, the proper allocation of limited prosecutorial resources, and the public interest. Thus, because the New Restrictions generally criminalize previously lawful and peaceful conduct with misdemeanor penalties, their prosecution is committed to my absolute discretion.

Consistent with that responsibility and authority, I have determined that this Office will decline to prosecute alleged violations of the New Restrictions. This decision not to prosecute is grounded in serious concerns regarding the New Restrictions’ constitutionality. Indeed, by banning many of the most popular firearms and ammunition magazines in the nation, the New Restrictions contravene constitutional text, historical understanding, and binding Supreme Court precedents.

In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the U.S. Supreme Court explained that the Second Amendment protects the individual right to keep and bear arms, and that a ban on weapons “in common use” is simply “invalid.” *Id.* at 627, 629. No legislator, police officer, Commonwealth’s Attorney, or even judge has the authority to prosecute crimes for the firearms overwhelmingly preferred by the American people in lawfully exercising the right to keep and bear arms.

The New Restrictions unquestionably cover arms “in common use.” For example, the U.S. Supreme Court has observed that the weapons banned by the New Restrictions are “widely legal and bought by many ordinary consumers.” *Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, 605 U.S. 280, 297 (2025). Indeed, the “AR-15 is the most popular rifle in the country.” *Id.* Rather than resist these statements by our nation’s highest Court, like the U.S. Court of Appeals for the Fourth Circuit has done in *Bianchi v. Brown*, 111 F.4th 438 (4th Cir. 2024), I intend to follow the Constitution – and the Supreme Court’s guidance – as clearly written. *See Snope v. Brown*, 145 S. Ct. 1534, 1534 (2025) (Kavanaugh, J., respecting denial of certiorari) (“States ... that prohibit AR-15s are something of an outlier. ... [P]etitioners have a strong argument that AR-15s are in ‘common use’ by law-abiding citizens and therefore are protected by the Second Amendment....”); *see also id.* at 1535-36 (Thomas, J., dissenting from denial of certiorari) (“AR-15s are clearly ‘Arms’ under the Second Amendment’s plain text.... I am not aware of any ‘historical regulation’ that could serve as ‘a proper analogue’ to [their] ban.”).

More recently in *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1 (2022), the Supreme Court affirmed the “unqualified deference” that the government must extend to “the traditions of the American people.” *Id.* at 26. Thus, the only constitutional firearm regulations are those that are historically grounded and analogous to the sort that were accepted by the Framers of the Constitution in 1791. Importantly, however, not even a historical tradition can justify “laws restricting ... weapons that are unquestionably in common use today.” *Id.* at 47. But even so, the Founding generation never saw fit to ban commonly owned firearms, and so there is no constitutional justification for doing so today.

Likewise, Article I, Section 13 of the Virginia Constitution has protected Virginians’ right to keep and bear arms since 1776. This provision “cannot provide fewer rights than the rights inherent under the Second Amendment.” *Stickley v. City of Winchester*, 110 Va. Cir. 300, 316

(Winchester Cir. Ct. 2022). Thus, I am of the opinion that the New Restrictions are doubly unconstitutional under both federal *and* state law.

Thus, in light of the U.S. and Virginia Constitutions' protections for the right to keep and bear arms, this Office will not enforce the New Restrictions. For decades, countless law-abiding Virginians within this jurisdiction have peaceably acquired, manufactured, possessed, used, and carried the firearms and magazines that the New Restrictions now ban. Possessing commonly owned firearms is the birthright of all Americans, and it is not the role of this office to assist in the eradication of the People's enumerated constitutional rights.

Sincerely yours,

[Name]

Commonwealth's Attorney for [Jurisdiction]

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