V I R G I N I A:

IN THE CIRCUIT COURT FOR SPOTSYLVANIA COUNTY

DUSTIN R. CURTIS, *et al.*, Plaintiffs, v. COLONEL JEFFREY S. KATZ, *et al.*, Defendants.	Case No.: CL26-2454

DEFENDANT MEHAFFEY'S BRIEF IN RESPONSE TO PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

COMES NOW G. Ryan Mehaffey, in his official capacity as Commonwealth's Attorney for Spotsylvania County, Virginia, and responds to the Plaintiffs' motion for a preliminary injunction. The Plaintiffs' motion is meritorious and must be granted under Virginia Supreme Court Rule 3:26 because 1) a violation of a constitutional right is irreparable harm; 2) Plaintiffs are likely to succeed on the merits since the assault weapons ban is a sweeping ban of many ordinary and commonly used firearms; 3) the balance of hardships supports maintaining the *status quo* in existence for over 200 years; and, 4) the public interest weighs in favor of protecting the constitutional rights of millions of law-abiding Virginians while the merits are adjudicated.

ARGUMENT

Under Va. Sup. Ct. R. 3:26, the Plaintiffs are entitled to a preliminary injunction to preserve the *status quo* and prevent irreparable harm to millions of Virginians stemming from a violation of their Article I, Section 13 rights under the Virginia Constitution.

> Rule 3:26 establishes as a threshold requirement that a court may issue a preliminary injunction only if it first determines that the movant will more likely than not suffer irreparable harm without the preliminary injunction. 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, 915 S.E.2d 761, 770 (2025) (internal citation and quotation omitted). As a threshold matter, a violation of a constitutional right is irreparable harm. *See Elrod v. Burns*, 427 U.S. 347, 373, 96 S. Ct. 2673, 2690, 49 L. Ed. 2d 547 (1976) ("The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.") "The constitutional right to bear arms in public for self-defense is not a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees." *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 70, 142 S. Ct. 2111, 2156, 213 L. Ed. 2d 387 (2022). Without an injunction, the assault weapon ban will certainly take effect on July 1, 2026, and affect the constitutional rights of all Virginians.

With certain and significant effect on the constitutional rights of all Virginians beginning on July 1, 2026, the court must consider the three factors for issuance of a preliminary injunction, all which support granting an injunction.

I. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS BECAUSE THE ASSAULT WEAPONS BAN IS A SWEEPING BAN OF MANY ORDINARY AND COMMONLY USED FIREARMS

Plaintiffs are likely to succeed on the merits because the assault weapons ban is indefensibly broad, outlawing many ordinary and commonly used firearms. The assault weapons ban outlaws purchasing "AR–15s, the most popular civilian rifle in America." *Snope v. Brown*, 145 S. Ct. 1534, 1535, 222 L. Ed. 2d 1059 (2025). It outlaws purchasing a common Sig Sauer P320 because it has a standard 17-round magazine. *See* Jt. Stmt. of Agreed Facts of Pl. and Def. Roger L. Harris. It also outlaws purchasing a Mossberg SA-28 Tactical Turkey; a Franchi Affinity 3 Turkey Elite; and, a TriStar Viper G2 Turkey, which are ranked by Field & Stream as three of

the best turkey shotguns of 2026.[1] Photographs of these ordinary and commonly used semiautomatic turkey guns with pistol grips are attached collectively as Def. Mehaffey Ex. 1. The astounding breadth of the ban caused the Governor of Virginia to initially veto the ban with amendments saying, "The Governor's amendments provide additional clarity to law enforcement as it relates to the firearms included under this legislation, as well as protect the use of certain semi-automatic shotguns used for hunting."[2] The Governor's proposed amendments were not adopted by the General Assembly, and the Governor ultimately signed the originally proposed sweeping assault weapons ban. Many ordinary and commonly used firearms are outlawed for purchase by any Virginian for any reason under the assault weapons ban, rendering it indefensible under both Virginia's Constitution and the U.S. Constitution.

The Plaintiffs are likely to succeed on the merits because 1) the purpose of Article I, Section 13 is to protect a combat force of citizen-soldiers trained to arms; 2) the text and history of Article I, Section 13 supports an armed population of citizen-soldiers; and, 3) U.S. Supreme Court precedent persuasively supports an interpretation of Article I, Section 13 that protects a militia of ordinary people trained to small arms that are lawfully in common use today.

a. The purpose of Article I, Section 13 is to oppose governmental tyranny by protecting a combat force of citizen-soldiers trained to arms

Article I, Section 13 of the Virginia Constitution and the Second Amendment of the U.S. Constitution structure the balance of power between the people and their government, protecting the people from being disarmed by their governments and establishing a bulwark against tyranny.

> The debate with respect to the right to keep and bear arms, as with other guarantees in the Bill of Rights, was not over whether it was desirable (all agreed that it was) but over whether it needed to be codified in the Constitution. During the 1788 ratification debates, the fear that the Federal Government would disarm the people

[1] https://fieldandstream.com/outdoor-gear/guns-gear/shotguns-gear/best-turkey-shotguns
[2] https://www.governor.virginia.gov/newsroom/news-releases/2026/april-releases/name-1116400-en.html

> in order to impose rule through a standing army or select militia was pervasive in Antifederalist rhetoric.
> …
> It is therefore entirely sensible that the Second Amendment's prefatory clause announces the purpose for which the right was codified: to prevent elimination of the militia. The prefatory clause does not suggest that preserving the militia was the only reason Americans valued the ancient right; most undoubtedly thought it even more important for self-defense and hunting. But the threat that the new Federal Government would destroy the citizens' militia by taking away their arms was the reason that right—unlike some other English rights—was codified in a written Constitution.

Dist. of Columbia v. Heller, 554 U.S. 570, 598, 128 S. Ct. 2783, 2801, 171 L. Ed. 2d 637 (2008). In *Bianchi v. Brown*, the Fourth Circuit chose to ignore the militia purpose of codification of the Second Amendment. 111 F.4th 438, 448 (4th Cir. 2024), *cert. denied sub nom. Snope v. Brown*, 145 S. Ct. 1534, 222 L. Ed. 2d 1059 (2025)("As demonstrated above, the AR-15 is a combat rifle that is both ill-suited and disproportionate to self-defense. It thereby lies outside the scope of the Second Amendment."). But the U.S. Supreme Court quickly criticized the Fourth Circuit's "surprising conclusion." *Snope v. Brown*, 145 S. Ct. 1534, 1535, 222 L. Ed. 2d 1059 (2025)("The Fourth Circuit held that it is [permissible to ban an AR-15], reasoning that AR–15s are not 'arms' protected by the Second Amendment. *Bianchi v. Brown*, 111 F.4th 438, 448 (2024) (*en banc*). I would grant *certiorari* to review this surprising conclusion.").

The militia purpose of Article I, Section 13 of the Virginia Constitution and the Second Amendment of the U.S. Constitution was detailed in *U.S. v. Miller*, 307 U.S. 174, 59 S.Ct. 816, 83 L.Ed. 1206 (1939). In *Miller*, the U.S. Supreme Court held, "In the absence of any evidence tending to show that possession or use of a 'shotgun having a barrel of less than eighteen inches in length' at this time has some reasonable relationship to the preservation or efficiency of a well regulated militia, we cannot say that the Second Amendment guarantees the right to keep and bear such an instrument." *Id.* at 178. A sawed-off shotgun is not protected because it does not have

some reasonable relationship to the preservation or efficiency of a well regulated militia. An instrument that has some reasonable relationship to the preservation or efficiency of a well regulated militia is protected. *Id.* In its reasoning, *Miller* detailed the historical tradition of Virginia, which not only allowed but required the people of the militia to arm themselves with a musket and 20 cartridges, combat arms. *Id.* at 182. Like the U.S. Constitution's Sixth Amendment right to appointment of counsel, if a person could not afford a musket, one would be provided to them by the court out of the public funds. *Id.*

After *Miller*, public debate arose as to whether an individual right to arms existed in Article I, Section 13 of the Virginia Constitution and the Second Amendment of the U.S. Constitution. In *Heller*, the court considered whether the militia clause limited the right to only the militia or whether an individual right to keep and bear arms existed.

> The two sides in this case have set out very different interpretations of the Amendment. Petitioners and today's dissenting Justices believe that it protects only the right to possess and carry a firearm in connection with militia service. See Brief for Petitioners 11–12; post, at 2822 (STEVENS, J., dissenting). Respondent argues that it protects an individual right to possess a firearm unconnected with service in a militia, and to use that arm for traditionally lawful purposes, such as self-defense within the home. See Brief for Respondent 2–4.

Dist. of Columbia v. Heller, 554 U.S. 570, 577, 128 S. Ct. 2783, 2789, 171 L. Ed. 2d 637 (2008). *Heller* held an individual may keep and bear arms that are in common use for lawful purposes:

> We think that Miller 's "ordinary military equipment" language must be read in tandem with what comes after: Ordinarily when called for militia service able-bodied men were expected to appear bearing arms supplied by themselves and of the kind in common use at the time. The traditional militia was formed from a pool of men bringing arms "in common use at the time" for lawful purposes like self-defense. In the colonial and revolutionary war era, small-arms weapons used by militiamen and weapons used in defense of person and home were one and the same.

Heller, 554 U.S. at 624–25, 128 S. Ct. at 2815, 171 L. Ed. 2d 637 (2008). "*Miller* said, as we have explained, that the sorts of weapons protected were those 'in common use at the time.'" *Id*. at 627.

In *Heller*, the U.S. Supreme Court affirmed an individual right to keep and bear arms, but it also did not abrogate "the purpose for which the [Second Amendment] right was codified: to prevent elimination of the militia." *Id. Heller* harmonized the two clauses of the Second Amendment:

> The Second Amendment is naturally divided into two parts: its prefatory clause and its operative clause. The former does not limit the latter grammatically, but rather announces a purpose. The 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."

554 U.S. at 577, 128 S. Ct. at 2789, 171 L. Ed. 2d 637. Article I, Section 13 of the Virginia Constitution and the Second Amendment of the U.S. Constitution protect the individual rights of the people to keep and bear arms that are in common use today for lawful purposes because a well-regulated militia trained to arms is necessary to protect a free State. The purpose of Article I, Section 13 of the Virginia Constitution and the Second Amendment of the U.S. Constitution is to limit the power of the government by protecting the militia. A militia of citizen-soldiers trained to arms establishes a balance of power between the people and their government, protecting the people from being disarmed by their government and lorded over.

b. <u>The text and history of Article I, Section 13 supports an armed population of citizen-soldiers to protect against governmental tyranny</u>

Plaintiffs challenge the assault weapons ban solely under Article I, Section 13 of the Virginia Constitution, which states,

> That 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; that standing armies, in time of peace, should be avoided as dangerous to liberty; and that in all cases the military should be under strict subordination to, and governed by, the civil power.

Article I, Section 13 was enacted on June 29, 1776, 15 years before ratification of the Second Amendment on December 15, 1791. It was not until 1971 that the clause, "therefore, the right of the people to keep and bear arms shall not be infringed" was added to the Virginia Constitution.

In Second Amendment jurisprudence under *Heller*, this clause is known as the "individual rights" or "operative clause." But from 1776 until 1971, almost 200 years, Article I, Section 13 of the Virginia Constitution only had the first clause, "That 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." In Second Amendment jurisprudence under *Heller*, the first clause is known as the "militia clause" or the "prefatory clause." But for most of the existence of the Virginia Constitution, the militia clause of Article I, Section 13 was not prefatory to anything. For almost 200 years, the Virginia Constitution contained only the militia clause. While Second Amendment jurisprudence is helpful to understand Article I, Section 13, it is only persuasive authority. Second Amendment jurisprudence is only applicable to Article I, Section 13 to the extent the Virginia Supreme Court holds the two sister constitutional rights to be coextensive. The Virginia Supreme Court has never held the militia clause of Article I, Section 13 to be coextensive with the prefatory clause of the Second Amendment. The text of Article I, Section 13 demonstrates the emphasis of Article I, Section 13 is to preserve and protect the militia, composed of the body of the people, trained to arms, because that is the proper, natural, and safe defense of a free state.

The history of Article I, Section 13 likewise supports a robust militia. In the historical tradition of Virginia, the militia was required by law to be armed and trained for military duty, for combat, to suppress insurrection, repel invasion, and resist tyranny. "The General Assembly of Virginia, October, 1785 (12 Hening's Statutes c. 1, p. 9 et seq.), declared: 'The defense and safety of the commonwealth depend upon having its citizens properly armed and taught the knowledge of military duty.'" *United States v. Miller*, 307 U.S. 174, 181, 59 S. Ct. 816, 819, 83 L. Ed. 1206 (1939). It included the duty to keep and bear not just combat firearms, but other instruments of war such as a "good bayonet," a "good knapsack and canteen," and "a cartridge box properly made,

to contain and secure twenty cartridges fitted to his musket." *Id.* There was an affirmative legal obligation for the people to arm themselves for combat. If a person was "so poor that he cannot purchase the arms herein required, such court shall cause them to be purchased out of the money arising from delinquents." *Id.* at 182.

> There are many reasons why the militia was thought to be "necessary to the security of a free State." *See* 3 Story § 1890. First, of course, it is useful in repelling invasions and suppressing insurrections. Second, it renders large standing armies unnecessary—an argument that Alexander Hamilton made in favor of federal control over the militia. The Federalist No. 29, pp. 226, 227 (B. Wright ed.1961). Third, when the able-bodied men of a nation are trained in arms and organized, they are better able to resist tyranny.

Heller, 554 U.S. 570, 597–98, 128 S. Ct. 2783, 2800–01, 171 L. Ed. 2d 637 (2008). The history that the founding generation knew "showed that the way tyrants had eliminated a militia consisting of all able-bodied men was not by banning the militia but simply by taking away the people's arms, enabling a select militia or standing army to suppress political opponents. This is what occurred in England that prompted codification of the right to have arms in the English Bill of Rights." *Id.* at 598. Those timeless concerns of invasion, insurrection or a select militia suppressing political opponents were squarely in the minds of the founders when Article I, Section 13 was ratified. With these concerns in mind, and with the resolve to combat a tyrannical government with arms, the founders declared, "That 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." Va. Const. Article I, Section 13. The text and history of Article I, Section 13 supports an armed populace of citizen-soldiers to guard against governmental tyranny, insurrection and invasion.

c. U.S. Supreme Court precedent persuasively supports an interpretation of Article I, Section 13 that protects a militia of the people trained to small arms that are lawfully in common use today

Second Amendment jurisprudence from the U.S. Supreme Court is persuasive in interpreting Article I, Section 13 of the Virginia Constitution. *Miller* protects the right to keep and bear instruments that have "some reasonable relationship to the preservation or efficiency of a well regulated militia." 307 U.S. 174, 178. *Heller* protects an individual right to keep and bear arms that are in common use today for lawful purposes. 554 U.S. at 624–25. The leading Second Amendment case, *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1, 17, 142 S. Ct. 2111, 2126, 213 L. Ed. 2d 387 (2022), presumes a statute banning common firearms from the general population is unconstitutional.

> In keeping with *Heller*, we hold that when the Second Amendment's plain text covers an individual's conduct, the Constitution presumptively protects that conduct. To 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. Only if a firearm regulation is consistent with this Nation's historical tradition may a court conclude that the individual's conduct falls outside the Second Amendment's "unqualified command."

597 U.S. 1, 17, 142 S. Ct. 2111, 2126, 213 L. Ed. 2d 387 (2022). In determining whether the plain text covers an individual's conduct, *Bruen* found "Koch and Nash – two ordinary, law-abiding, adult citizens – are part of 'the people' whom the Second Amendment protects." *Id.* at 32. *Bruen* then found that "handguns are weapons 'in common use' today for self-defense." *Id.* Then the *Bruen* court considered "whether the plain text of the Second Amendment protects Koch's and Nash's proposed course of conduct – carrying handguns publicly for self-defense." *Id.* Under *Bruen*, it is the government's burden to overcome a presumption of unconstitutionality and "to demonstrate that the regulation is consistent with this Nation's historical tradition of firearm

regulation" *Id.* There is no historical precedent for banning all law-abiding Virginians from purchasing entire categories of firearms that are in common use today for many lawful purposes.

The Fourth Circuit's "surprising conclusion" in *Bianchi* is wrongly decided and not binding precedent, even if this matter was brought under the Second Amendment. 111 F.4th 438, 448 (4th Cir. 2024), *cert. denied sub nom. Snope v. Brown*, 145 S. Ct. 1534, 222 L. Ed. 2d 1059 (2025). "While this Court considers Fourth Circuit decisions as persuasive authority, such decisions are not binding precedent for the decisions of this Court." *Harris v. Washington & Lee Univ.*, 82 Va. App. 175, 202, 906 S.E.2d 128, 142 (2024), *quoting, Toghill v. Commonwealth*, 289 Va. 220, 227, 768 S.E.2d 674 (2015).

The text and history of Article I, Section 13, supports an armed population of citizen-soldiers to protect against governmental tyranny, insurrection and invasion. Second Amendment jurisprudence affirms a construction of Article I, Section 13 that protects the right of law-abiding citizens to keep and bear small arms that are in common use today for lawful purposes because a militia of ordinary citizens trained to arms is necessary for the defense of a free state.

In the present case, Plaintiffs are likely to succeed on the merits because the assault weapons ban categorically bans many ordinary and commonly used small arms from being purchased by any Virginian for any reason. Plaintiffs are ordinary, law-abiding, adult citizens, who are members of the unorganized militia of Virginia under Va. Code Ann. § 44-1. They are prohibited from purchasing many ordinary firearms that are in common use today, such as an M4, a Sig Sauer P320, a Mossberg SA-28 Tactical Turkey, a Franchi Affinity 3 Turkey Elite, and a TriStar Viper G2 Turkey. Although there are many lawful purposes for which they could purchase these firearms, such as for readiness in the Virginia unorganized militia, marksmanship training, self-defense, or turkey hunting, among other lawful purposes, the assault weapons ban

categorically and completely infringes their right to keep and bear any of these firearms for any reason. Therefore, the assault weapons ban is presumptively unconstitutional under *Bruen* because ordinary, law-abiding, adult Virginians are banned from purchasing many ordinary small arms that are in common use today for lawful purposes. The breadth of the assault weapons ban is indefensible, outlawing all Virginians from purchasing entire categories of ordinary and commonly used firearms for lawful purposes.

Moreover, if the militia clause of Article I, Section 13 is to be applied without regard to Second Amendment jurisprudence, the assault weapons ban must be considered with the fact that "the founding generation knew that the way tyrants had eliminated a militia consisting of all able-bodied men was not by banning the militia but simply by taking away the people's arms." *Heller*, 554 U.S. 570, 597–98. Article I, Section 13 existed for almost 200 years with only the militia clause articulating the predominant consideration of maintaining a militia of the people trained to arms to combat governmental tyranny. Plaintiffs are likely to succeed on the merits because the assault weapons ban is indefensibly broad, outlawing many ordinary and commonly used firearms. The ban completely infringes the people's right to arm themselves with many ordinary and commonly used small arms for readiness in the unorganized militia. The existence of a militia of citizen-soldiers trained in combat is necessary to guard a free state from tyranny, insurrection and invasion. Article I, Section 13 limits the government from disarming the militia.

II. THE BALANCE OF HARDSHIPS WEIGHS IN FAVOR OF PRESERVING THE *STATUS QUO*

An injunction would preserve the *status quo* that has existed for hundreds of years. Defendants would bear no realistic hardship from an injunction preventing enforcement of an unprecedented statute of dubious at best constitutionality. Without an injunction, Plaintiffs and countless other law-abiding Virginians would suffer the hardship of being banned from conduct

that was lawful for decades, if not hundreds of years. The balance of hardship between the parties decisively weighs in favor of preserving the *status quo*.

III. PUBLIC INTEREST WEIGHS IN FAVOR OF AN INJUNCTION

An injunction is in the public interest. Millions of Virginians are concerned about infringement of their constitutional rights. Moreover, many law enforcement officials in Virginia bear the hardship of being placed in the untenable position of being compelled to enforce a law they firmly believe is unconstitutional, despite their oath of office to support the U.S. And Virginia constitutions. Virginia managed to survive for hundreds of years without an assault weapons ban. In 2024, there were 359 firearms used in murder and non-negligent manslaughter according to Virginia State Police.[3] 175 did not have a type of firearm identified. Out of the identified firearms, 164 were handguns, 16 were rifles, and 6 were shotguns. Only 6 out of 359 firearms were identified as shotguns. It is unknown whether any of these 6 deaths were caused by a semiautomatic shotgun with a pistol grip. The public interest weighs in favor of determining whether the assault weapons ban, which includes banning all semiautomatic shotguns with a pistol grip, infringes on the rights secured to the people by Article I, Section 13 before enforcing a sweeping ban against every Virginian from purchasing many ordinary and commonly used firearms. Public interest decisively weighs in favor of an injunction.

CONCLUSION

In summary, the Plaintiffs' motion is meritorious and must be granted under Virginia Supreme Court Rule 3:26 because 1) a violation of a constitutional right is irreparable harm; 2) Plaintiffs are likely to succeed on the merits as the assault weapons ban is a broad ban that outlaws many ordinary and commonly used firearms; 3) the balance of hardships weighs heavily in favor

[3] https://vsp.virginia.gov/wp-content/uploads/2026/03/Crime-In-Virginia-2024a.pdf

of maintaining the *status quo* in existence for over 200 years; and, 4) the public interest weighs heavily in favor of protecting the rights of millions of law-abiding Virginians. Even if the court were to decide that the Plaintiffs may be unlikely to succeed on the merits, that result is far from certain, and the gravity of the balance of hardships and the public interest decisively and dispositively weighs in favor granting an injunction.

WHEREFORE the Defendant, G. Ryan Mehaffey, Commonwealth's Attorney for Spotsylvania County, Virginia, in his official capacity, prays that this court grants an injunction.

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CERTIFICATE

I do hereby certify that on this 10th day of June, 2026, a true copy of the foregoing pleading was sent to the parties below:

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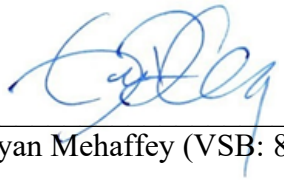

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