

V I R G I N I A :

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.)

Civil Action No. CL26000201-00

COLONEL JEFFREY S. KATZ,)
In His Official Capacity as)
Superintendent of the Virginia)
State Police,)
Defendant.)

**DEFENDANT KATZ'S OPPOSITION
TO MOTION FOR PRELIMINARY INJUNCTION**

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INTRODUCTION

Plaintiffs ask this Court—on an emergency basis—to declare that there is an absolute individual right to keep and bear arms secured by Article I, § 13 of the Constitution of Virginia, recognizing no limit on the arms a person may acquire or transfer. They challenge SB749, a recently enacted law that restricts certain assault firearms and large-capacity magazines in response to an epidemic of mass shootings. Under Plaintiffs’ interpretation, the Commonwealth may not restrict assault firearms or LCMs at all and could not even bar the grenade launchers that SB749 also reaches.

That position cannot be squared with how *any* court has understood the right to keep and bear arms. The U.S. Supreme Court has long held that the right set out in the Second Amendment to the U.S. Constitution is not unlimited and leaves ample room for reasonable firearms regulation; it does not entitle a citizen to keep and carry any weapon, in any manner, for any purpose. And Virginia courts have repeatedly upheld firearms regulations under the Constitution of Virginia. Plaintiffs’ absolutist theory finds no footing in either body of law.

What Plaintiffs seek, then, is for this Court to blaze an entirely new constitutional path and enjoin a legislative judgment endorsed not only by Virginia’s General Assembly but by numerous other States and the courts that have reviewed comparable laws. And they ask the Court to do so without offering any evidence, historical or otherwise, in support of their motion. The Commonwealth, by contrast, comes forward with declarations from *six* subject-matter experts.

Plaintiffs also seem to forget that their claims rest entirely on § 13—a provision the People of Virginia adopted only in 1971—yet they argue almost exclusively from federal cases and scarcely engage § 13 at all. That is a serious misstep. The text and ratification history of § 13 differ markedly from the Second Amendment and support a collective, militia-tethered right rather than

an individual one enforceable against the Commonwealth. Instead of analyzing § 13 based on its plain language and history, Plaintiffs press the federal *Bruen* framework.

In the end, it does not matter which framework this Court applies, because SB749 readily survives both. Under *Bruen*, the arms and accessories that SB749 regulates are not in common use for lawful civilian self-defense; they are the dangerous and unusual weapons that fall outside the constitutional right to keep and bear arms, and the Commonwealth's restrictions are fully consistent with the principles underlying this Nation's, including Virginia's, historical tradition of firearm regulation. Under the Virginia methodology, SB749 does not implicate any right § 13 confers, but even if it did, any reasonable consideration of the Commonwealth's substantial public-safety interest against the modest burden on the asserted right resolves in favor of the law.

At bottom, Plaintiffs come nowhere close to carrying their burden for the extraordinary relief they seek. They are unlikely to succeed on the merits, they face no irreparable harm without an injunction, an injunction would disserve the public interest, and the balance of equities tilts sharply against enjoining a critical public-safety law. The motion should be denied.

LEGAL STANDARD

Plaintiffs face at least a double burden here. “[T]he granting of an injunction is an extraordinary remedy,” *Levisa Coal Co. v. Consolidation Coal Co.*, 276 Va. 44, 60 (2008), and Plaintiffs bear a “high” threshold to obtain one. *Id.* at 61–62. On top of that, because Plaintiffs challenge SB749 as unconstitutional, they also bear the burden of overcoming the presumption of constitutionality that attaches to every act of the General Assembly. *Montgomery Cnty. v. Va. Dep’t of Rail & Pub. Transp.*, 282 Va. 422, 435 (2011). “[A]ny reasonable doubt regarding a statute’s constitutionality” must be resolved “in favor of its validity.” *Id.* at 435 (internal quotation marks omitted). In fact, any time a State “is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury.” *Maryland v. King*, 567 U.S.

1301, 1303 (2012) (Roberts, C.J., in chambers) (quoting *New Motor Vehicle Bd. of Cal. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1351 (1977) (Rehnquist, J., in chambers)). Plaintiffs cannot carry either burden, much less both.

ARGUMENT

I. Threshold defects doom Plaintiffs' motion.

Plaintiffs' motion fails three threshold tests. *First*, four of the five Plaintiffs lack standing, and the fifth cannot establish standing against this Defendant for the conduct his affidavit identifies. *Second*, Plaintiffs' "facial" challenge to SB749 fails because they cannot show that the statute is unconstitutional in all its applications. *Third*, Plaintiffs have not shown the imminent, irreparable harm that emergency injunctive relief requires. Each defect is independently fatal.

A. Plaintiffs lack standing.

Standing is "an absolutely indispensable part of a plaintiff's case," and "[a]n action filed by a party who lacks standing is a legal nullity." *Layla H. v. Commonwealth*, 81 Va. App. 116, 140 (2024) (internal quotation marks omitted). The Court must therefore resolve standing before reaching the preliminary injunction factors. *Morgan v. Bd. of Supervisors*, 302 Va. 46, 58 (2023).

Virginia courts apply the familiar three-part standing inquiry. A plaintiff must show: (1) a distinct and particularized injury, meaning a direct interest in the controversy separate from the public at large; (2) that the injury is fairly traceable to the challenged action of the defendant; and (3) that the injury is redressable by the court. *Layla H.*, 81 Va. App. at 134–35. Redressability requires that the requested remedy, even if not "a complete solution," must be "enough to be able to address the harms of the named defendants." *Philip Morris USA Inc. v. Chesapeake Bay Found., Inc.*, 273 Va. 564, 579 (2007).

Plaintiffs have not made that showing for the relief they seek here. The Organizational Plaintiffs purport "to assert the rights and interests of their members and supporters in a

representational capacity.” PI Mem. at 5. But under Virginia law, organizations cannot bring suit on behalf of their members absent express statutory authorization. *See W.S. Carnes, Inc. v. Bd. of Sup’rs of Chesterfield Cnty.*, 252 Va. 377, 383 (1996). Indeed, Virginia courts have made clear that an organization cannot act as a surrogate for its members in litigation without explicit authority. *See Hawkins v. Grese*, 68 Va. App. 462, 480 (2018) (observing the general rule that only an individual may challenge the constitutionality of a law as it applies to him). The Organizational Plaintiffs identify no statute authorizing them to sue on behalf of their members.

That leaves Crump. Even assuming his allegations establish some pre-enforcement injury, they do not establish standing for the sweeping relief Plaintiffs seek against Defendant Katz, who is the Superintendent of the Virginia Department of State Police. The State Police administer certain firearms-transaction functions, including the criminal history records-check that licensed dealers must request before transferring a firearm. *See* Va. Code § 18.2-308.2:2(B). Those functions matter to some of the transactions at issue, but not to the conduct Crump’s affidavit describes. He wishes to assemble an AR-15-style rifle, acquire a belt-fed upper receiver for assembly, transfer firearms and magazines to private individuals, publicly carry covered firearms, and continue carrying, transferring, gifting, disposing of, and using covered items he already owns. For those alleged injuries, Crump has not shown that Katz caused the asserted harm or that an injunction against him would redress it.

Commonwealth’s Attorneys and local law enforcement will also enforce SB749, but as independent prosecutors and officers, not as agents of Katz. Criminal prosecution and forfeiture authority, for example, rests with Commonwealth’s Attorneys, not Katz. *See* Va. Code § 15.2-1627; Va. Const. art. VII, § 4. Sheriffs likewise exercise independent local law enforcement authority in the locality from which they are elected. *See* Va. Code § 15.2-1609. Any prosecution or forfeiture

proceeding based on later possession or use of covered items would be brought, if at all, by officials exercising authority independent of Katz. An injunction against him would not bind those independent actors, and Plaintiffs cannot cure that defect by drafting broad injunctive language reaching “officers, agents, servants, employees and all other persons in active concert” with him. They are not under his command, and non-party officials do not become bound simply because Plaintiffs ask the Court to bind them.

That is fatal to traceability and redressability. *See Morgan*, 302 Va. at 64; *Philip Morris*, 273 Va. at 579. At most, an injunction against Katz could address the State Police’s own role in dealer-based firearm transactions. That limited possibility does not support the statewide injunction Plaintiffs seek across a wide range of conduct and against actors who are not before the Court. Plaintiffs must show that the named defendant caused the alleged injury and that relief against him will redress it. They have not made that showing.

Because standing is jurisdictional, Plaintiffs must establish it before the Court may reach the preliminary injunction factors. They have not done so, and the motion should thus be denied.

B. Plaintiffs’ facial challenge fails because some applications of the challenged statutes plainly fall outside Section 13’s protections.

Plaintiffs’ facial challenge, *see* Compl. ¶¶ 22, 176, fails even if this Court finds that some—but not all—weapons and accessories regulated by SB749 are within § 13’s scope. “A facial challenge to a legislative Act is, of course, the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the Act would be valid.” *United States v. Salerno*, 481 U.S. 739, 745 (1987); *see also United States v. Rahimi*, 602 U.S. 680, 693 (2024). “Facial challenges are disfavored because they create a risk of premature interpretation of statutes on the basis of factually barebones records[,] run contrary to the fundamental principle of judicial restraint,” and “invalidate an entire law that was passed through

the democratic process.” *Toghill v. Commonwealth*, 289 Va. 220, 227–28 (2015) (internal quotation marks omitted). Even where a law has some unconstitutional applications, courts will “attempt to nullify no more of the legislature’s work than is necessary.” *Id.* at 233.

That principle is dispositive here. Plaintiffs do not target particular weapons or features; they argue that the entire statute is unconstitutional. *See* Compl. ¶¶ 22, 176. To prevail, they must show that every weapon and feature SB749 regulates merits protection under § 13. They cannot do so. SB749 reaches firearms equipped with grenade launchers, *see* Va. Code § 18.2-308.2:2(F)(2)(iv), and firearms with threaded barrels capable of accepting suppressors, *see* Compl. ¶ 29. Plaintiffs present no evidence to support their contention that § 13 confers an absolute constitutional right to acquire grenade launchers, devices designed for wide-area destruction at long range, with no plausible lawful, civilian self-defense function. Nor can they overcome the well-settled view in the federal courts, which Virginia courts may treat as persuasive, that “the Second Amendment does not protect the possession of a silencer.” *Miller v. United States*, No. 25-3459, 2025 U.S. App. LEXIS 28668, at *5 (6th Cir. Oct. 30, 2025). If even one application of SB749 is constitutional, the facial challenge fails. *Salerno*, 481 U.S. at 745. Plaintiffs have not tried to argue otherwise, and they cannot. The Court should deny the motion on this basis alone.

C. Even if Plaintiffs could clear those hurdles, they have not met their burden of demonstrating irreparable harm.

Plaintiffs must show that they are likely to suffer irreparable harm to obtain preliminary relief. Va. Sup. Ct. R. 3:26(c). They cannot do so for at least three reasons.

First, Plaintiffs identify only a speculative possibility that any constitutional right may be infringed. Crump states that he “wish[es] to acquire” a number of new firearms regulated by SB749. Crump Aff. ¶¶ 11, 15–21, 25–28, 30, 33, 34. The Organizational Plaintiffs similarly state that they and their members “wish” to acquire firearms that would run afoul of SB749. Compl.

¶¶ 48–54. A preliminary injunction is an “extraordinary remedy” that cannot rest on mere possibility. *Dillon v. Northam*, 105 Va. Cir. 402, 408 (Norfolk 2020). Plaintiffs’ future “wish[es]” do not clear that bar.

Second, SB749 does not impair Plaintiffs’ ability to possess and use covered firearms they already own. Crump acknowledges that he already owns firearms—including assault weapons and large-capacity magazines—that SB749 grandfathered in existing lawful possession. Crump Aff. ¶ 10. Crump does not explain why the firearms he already possesses are insufficient for any lawful purpose such as self-defense, nor do the Organizational Plaintiffs, whose members are also gun owners. *See* Compl. ¶¶ 47–54. Indeed, some “assault firearms” are manufactured to be compliant with state restrictions. Ex. 1 ¶ 13 (Klarevas). Without an allegation that SB749 strips Plaintiffs of arms they currently possess, the irreparable harm showing collapses into speculative wishes.

Third, Plaintiffs are not currently being denied any right, and no legally cognizable injury has yet occurred. “An irreparable injury is one for which ‘fair and reasonable redress may not be had in a court of law and [for which] to refuse the injunction would be a denial of justice.’” *Highlander v. Va. Dep’t of Wildlife Res.*, 84 Va. App. 404, 436 (2025) (quoting *Thompson v. Smith*, 155 Va. 367, 387 (1930)). If Plaintiffs ultimately prevail, courts retain authority to grant appropriate relief at that time. *See Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 32–33 (2008).

Courts have consistently denied motions for preliminary injunction in cases challenging restrictions on assault weapons and concluded that plaintiffs had suffered no irreparable harm. *See, e.g., Del. State Sportsmen’s Ass’n, Inc. v. Del. Dep’t of Safety & Homeland Sec.*, 664 F. Supp. 3d 584 (D. Del. 2023), *aff’d on other grounds*, 108 F.4th 194 (3d Cir. 2024); *Ocean State Tactical, LLC v. Rhode Island*, 646 F. Supp. 3d 368 (D.R.I. 2022), *aff’d*, 95 F.4th 38 (1st Cir. 2024). Emergency relief is not necessary at this juncture, even if Plaintiffs’ arguments had merit.

II. Plaintiffs are not entitled to emergency relief because they cannot establish a likelihood of success on the merits.

SB749 is presumptively constitutional. *Montgomery Cnty.*, 282 Va. at 435. Plaintiffs bear the heavy burden of overcoming that presumption, *FFW Enters. v. Fairfax Cnty.*, 280 Va. 583, 590 (2010), and “any reasonable doubt regarding a statute’s constitutionality” must be resolved “in favor of its validity.” *Montgomery Cnty.*, 282 Va. at 435.

A. Legal framework for analyzing § 13 claims.

Plaintiffs have pleaded only that SB749 violates Article I, § 13 of the Constitution of Virginia and have expressly disavowed any claim under the Second Amendment or any other provision of federal law. Thus, this case must rise or fall on the text, structure, and history of Virginia’s own Constitution.

Plaintiffs nonetheless rely on a heavily curated review of federal case law as if those decisions exclusively controlled the meaning of Article I, § 13. While the Supreme Court of Virginia has not yet adopted a specific test for evaluating challenges under § 13, it has expressly cautioned against the lockstep approach Plaintiffs propose. Where the texts of Virginia and federal counterparts differ, “interpretations of the former inform but do not necessarily govern the construction of the latter.” *Vlaming v. West Point School Board*, 302 Va. 504, 530 (2023). Indeed, given the history of § 13, federal law cannot displace the provision’s text, structure, and ratification history. *See* Section II.B.2, *post*.

Section 13 differs from the Second Amendment in three respects of the kind *Vlaming* treated as dispositive: the conjunction “therefore” that has no federal counterpart, the placement of the right inside a section devoted to military matters, and a ratification record specific to 1971 that is unique to Virginia. The analysis therefore proceeds under Virginia’s own constitutional framework. Step one asks whether the challenged conduct falls within the text and context of the

constitutional provision invoked. *See, e.g., Vlaming*, 302 Va. at 532–41. Step two, if reached, asks what level of protection or review applies. *See, e.g., McNally v. Va. Dep’t of Motor Vehicles*, 80 Va. App. 483, 509–10 (2024); *Etheridge v. Med. Ctr. Hosps.*, 237 Va. 87, 97 (1989). That is the methodology the Court should apply here.

Even if federal Second Amendment doctrine retains any role, decisions like *Heller*; *Bruen*; *Bianchi v. Brown*, 111 F.4th 438 (4th Cir. 2024) (en banc), *cert. denied sub nom., Snope v. Brown*, 145 S. Ct. 1534 (2025); and the line of federal appellate decisions upholding substantially similar laws are persuasive authority that SB749 is constitutionally appropriate, *e.g., Duncan v. Bonta*, 133 F.4th 852 (9th Cir. 2025) (en banc). Those decisions are useful for the historical and empirical questions any constitutional analysis of firearms regulation must address, and they confirm that statutes like SB749 survive constitutional scrutiny. *See, e.g., Bianchi*, 111 F.4th at 451–62 (upholding Maryland’s assault-weapons ban, which was more restrictive than SB749, as consistent with the historical tradition of regulating excessively dangerous weapons). But the federal cases do not displace Virginia’s interpretive obligation, and the Court is not bound to import their methodology wholesale.

Were the Court inclined to treat the *Bruen* framework as controlling rather than informative for § 13 and set aside both Plaintiffs’ pleading choice and *Vlaming*’s direction, the result would not change. Under *Bruen*, step one asks whether the regulated conduct falls within the Second Amendment’s “plain text,” including whether the arms at issue are “in common use” for self-defense and whether they are “dangerous and unusual.” 597 U.S. at 31–32; *see Heller*, 554 U.S. at 627. Only if the conduct falls within the plain text does the burden shift to the government at step two to show the regulation is “consistent with this Nation’s historical tradition of firearm regulation,” a question that turns on whether the challenged law is “relevantly similar” to the

principles that underpin our historical regulatory tradition. *Bruen*, 597 U.S. at 17; *see Rahimi*, 602 U.S. at 691–92.

SB749 survives review under either framework. Under the Virginia methodology, SB749 does not implicate any right § 13 confers, and even if it did, any reasonable balancing of the Commonwealth’s substantial public-safety interest against the modest burden on the asserted right resolves in favor of the law. Applying the *Bruen* framework yields the same conclusion. The regulated arms and accessories are not “in common use” for lawful self-defense, they are precisely the sort of “dangerous and unusual” weapons that fall outside the protection of any plausible right to keep and bear arms, and the Commonwealth’s regulation of them is consistent with the historical tradition of firearm regulation. Sections II.B–II.D develop each framework in detail, but the result does not change: Plaintiffs cannot win on the merits, much less make the showing required for emergency relief.

B. Section 13 secures a collective, militia-tethered right.

The right Plaintiffs invoke is not the right the 1971 General Assembly wrote into Article I, § 13. Section 13, titled “Militia; standing armies; military subordinate to civil power,” reads:

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.

Va. Const. art. I, § 13 (emphasis added). The emphasized clause was added in 1971 and did not exist in any prior Constitution of Virginia. Rather than placing it in a free-standing section, the drafters embedded it inside the militia provision, joined to the militia clause by the conjunctive adverb “therefore.” That structure tied the new clause to the language that preceded it, making the right-to-bear-arms clause a consequence of the militia clause, not a free-standing guarantee.

1. Five independent sources confirm § 13's collective reading.

Stripped of its borrowed federal scaffolding—borrowed before the U.S. Supreme Court first found in 2008 an individual right to bear arms in the Second Amendment in *Heller*—§ 13 is what its text, structure, and ratification record show it to be: a guarantee of a collective right tied to militia service. Five independent sources confirm that reading.

Text. The word “therefore” distinguishes § 13 from the Second Amendment and resolves this case alone. “Therefore” is a conjunctive adverb meaning “for that reason” or “as a result.” *See, e.g., Therefore*, Oxford English Dictionary (Compact ed. 1971); *Therefore*, American Heritage Dictionary (2022). Used between a premise and a conclusion, “therefore” signals that the second clause is to be understood as a consequence of the first. The 1971 drafters chose that word—and rejected the semicolon that would have set the clauses apart—so the second clause would modify the first. On the floor of the House of Delegates, the sponsor of the amendment was asked whether “‘therefore’ is used to indicate that the phrase ‘the right of the people to keep and bear arms’ is to modify the previous phrase concerning a ‘well regulated militia.’” Delegate Harrell answered: “Yes. That is the reason the comma should be there rather than the semicolon. *The clause creates no additional rights.*” Proceedings and Debates of the Virginia House of Delegates Pertaining to Amendment of the Constitution: Extra Session 1969, Regular Session 1970, at 474 (1971) (“House Debates”) (emphasis added). Virginia’s interpretive method gives such contemporaneous legislative explanation by an amendment’s sponsor “great weight.” *Dean v. Paolicelli*, 194 Va. 219, 227 (1952).

Structure. The drafters’ placement of the new clause confirms the same reading. Section 13 addresses three subjects in three clauses: the militia, the dangers of standing armies, and the subordination of the military to civil power. The right-to-bear-arms clause is tucked inside the first of these. By 1971, twenty-two state constitutions protected a free-standing individual right to bear

arms with references to self-defense. See Eugene Volokh, *State Constitutional Rights to Keep and Bear Arms*, 11 Tex. Rev. L. & Pol. 191, 205 (2006). Virginia did not follow that path. The drafters took the language directly from the Second Amendment and embedded it in the militia provision without a single reference to individuals, self-defense, sport, or hunting. The right's location is itself evidence of its meaning. As Professor A.E. Dick Howard observed, § 13 “addresses itself directly to the relationship between armed bodies of men and the democratic state.” 1 A.E. Dick Howard, *Commentaries on the Constitution of Virginia* 266 (1974). And that architecture forecloses the analytical move the U.S. Supreme Court made in *Heller* with regard to the Second Amendment. There, the Court treated the Second Amendment's militia clause as merely “prefatory” because no conjunction marked it as subordinate to the operative clause. 554 U.S. at 577–78. Section 13 has such a conjunction, and the 1971 drafters added the right-to-bear-arms clause underneath an already-operative militia clause, not the other way around. *Heller*'s framework cannot legitimately be imported to interpret a provision structured in the opposite way.

Legislative debates. The drafters' assurances to their colleagues confirm what the architecture suggests. Asked three times whether the amendment would constrain the Commonwealth's regulatory authority, the sponsors each time said no. There was “no question of the constitutionality” of existing controls, Delegate Harrell stated. House Debates 473–74. Preventive legislation “would not be prohibited,” he told Delegate Durland. *Id.* at 474. And in the Senate, asked the same question about “limiting or diminishing” any “power . . . to regulate or control the possession and use of firearms,” Senator Long answered “No, Sir.” Proceedings and Debates of the Senate of Virginia Pertaining to Amendment of the Constitution: Extra Session 1969, Regular Session 1970, at 392 (1971) (“Senate Debates”). When Senator Bateman pressed further, asking whether the amendment would “retain[] the present constitutional theory” of the

Second Amendment as then construed, the collective-right theory under *United States v. Miller*, 307 U.S. 174 (1939), Senator Long answered affirmatively. Senate Debates 392–93. By the sponsors’ own repeated representations, the new clause created no new individual right, imposed no new limit on regulatory authority, and embraced the then-existing federal collective-right interpretation.

Public-facing materials. During the ratification process, Virginia’s voters were told the same. The press described the new clause as “a guarantee of [the] right to bear arms in militia” and reassured readers that the amendment “would not prevent enactment of gun control laws.” House Votes Arms Right, *Virginian-Pilot*, Apr. 3, 1969; *see also* Va. Charter Draft Ends, *Wash. Post*, Apr. 4, 1969, at G1 (new language “put in the militia clause, with explanation that it would have no effect on future attempts to pass gun-control legislation”). Professor Howard was emphatic in the same vein, stating that the new language was “firmly tied to the right of the people to a well regulated militia” and not “broad license for all citizens to keep and bear arms.” John Greiff, *Our Revised Constitution: Streamlined, Modernistic*, *Daily Press*, Apr. 20, 1969.

Attorney General opinion. Two decades after ratification, the Virginia Attorney General was asked to opine on § 13’s scope. The 1993 opinion was unequivocal: “The ‘right to bear arms’ phrase of Article I, § 13 of the Constitution of Virginia is synonymous with the Second Amendment to the United States Constitution. Under long-standing federal case law, the Second Amendment confers only a collective right to bear arms.” 1993 Op. Va. Att’y Gen. 13, 17. The Attorney General reached that conclusion after reviewing the same 1969 debates this Court must now consult. *Id.* at 14–15. Her official interpretation is strong corroborating evidence of original public meaning. *Cf. Dean*, 194 Va. at 227.

Text, structure, debates, press, and an Attorney General opinion all converge on the same reading: § 13’s right-to-bear-arms clause is a militia guarantee that left Virginia’s regulatory authority intact. That is what Virginia’s interpretive method demands, which honors the “original public meaning” of constitutional provisions. *Vlaming*, 302 Va. at 527; *see also Sharpe v. Robertson*, 46 Va. 518, 583 (1849); Hon. Lisa M. Lorish & Elizabeth Putfark, *The Emerging Virginia Constitution*, 59 U. Rich. L. Rev. 23, 76–79 (2024) (referendum-era public materials are “a rich source of information” for fixing original public meaning).

2. Federal Second Amendment doctrine does not control the meaning of § 13.

Faced with § 13’s text and history, Plaintiffs press a different position, that § 13 is “at least coextensive” with the Second Amendment, so federal interpretations necessarily control. That premise rests on three props: *DiGiacinto v. Rector & Visitors of George Mason University*, 281 Va. 127 (2011); three cherry-picked circuit court decisions; and a generalized intuition that two provisions saying similar things must mean the same thing. None bears that weight.

Start with the framework. The Supreme Court of Virginia recently rejected the very lockstep approach Plaintiffs press here. In *Vlaming*, the Court held that “because of the marked textual differences between the religion clauses of the First Amendment of the United States Constitution and the free-exercise provisions of the Constitution of Virginia, interpretations of the former inform but do not necessarily govern the construction of the latter.” 302 Va. 504, 530 (2023). The Court explained that prior “coextensive” findings reflect only a substantive judgment that the state right “match[ed]” the federal right “as we have understood both in specific cases”—not a blanket commitment to track every shift in federal doctrine. *Id.* at 526–27; *see also Drexel v. Commonwealth*, 80 Va. App. 720, 735 n.4 (2024) (“We do not automatically interpret the Virginia constitution as coextensive with the U.S. Constitution.”). Justice McCullough has expressed the point more sharply: “whatever interpretation the United States Supreme Court has adopted . . .

does not bind us in determining the meaning of” analogous Virginia provisions. *Palmer v. Atl. Coast Pipeline, LLC*, 293 Va. 573, 586 (2017) (McCullough, J., concurring). The textual and structural differences between § 13 and the Second Amendment are at least as pronounced as those *Vlaming* found dispositive. That means *Heller* and *Bruen* may inform, but do not control, the meaning of § 13.

DiGiacinto does not hold otherwise. The Court there used the word “co-extensive,” but with two key limitations: the holding applied “concerning all issues in the instant case,” and it analyzed the state and federal rights together “for the purposes of this opinion.” 281 Va. at 134. Those phrases *assumed* co-extension only for that case. And the actual question in *DiGiacinto* was a sensitive-places one—whether a public university could prohibit firearms on its grounds—and the appellee briefed only that the two provisions should be afforded the same meaning for that limited purpose. *Id.* at 133. In any event, the Court has never squarely held that § 13 confers an individual right disconnected from militia service. That question remains open. And *Vlaming*, decided over a decade later, confirms that earlier “coextensive” characterizations should not be read as the “sweeping declaration[s]” Plaintiffs make them out to be. 302 Va. at 526.

The circuit court decisions Plaintiffs rely on—*Stickley v. City of Winchester*, 110 Va. Cir. 300 (Winchester 2022); *Elhert v. Settle*, 105 Va. Cir. 326 (Lynchburg 2020); and *Wilson v. Hanley*, 116 Va. Cir. 425 (Lynchburg 2025)—do not bind this Court, and they assume co-extension as a starting premise without engaging the textual differences *Vlaming* requires. *Stickley* and *Elhert* predate *Vlaming*, and *Wilson* postdates it but did not apply its methodology. In contrast, another circuit court rejected Plaintiffs’ historical-framing argument on a similar challenge. In *LaFave v. County of Fairfax*, the court denied an injunction against a firearms regulation under § 13 and held that “the operable period of history for purposes of the analysis . . . should be 1971, which is when

the Virginia Legislature chose to adopt the right to bear arms in Article 1 Section 13.” 2023 Va. Cir. LEXIS 203, at *14 (Fairfax June 23, 2023). “It makes no sense,” the court explained, “to suggest that the Virginia Legislature would have bound themselves to an understanding of the Virginia Constitution that they did not share when they enacted Article 1 Section 13 in 1971.” *Id.* That same reasoning applies here.

C. Plaintiffs cannot show that SB749 falls under the “plain text” of Section 13 of the Constitution of Virginia.

Plaintiffs’ challenge fails at step one under either framework. The arms and accessories SB749 regulates are not presumptively protected by § 13, whether the Court applies Virginia’s interpretive methodology or the *Bruen* test.

Step one first requires fixing the relevant timeframe. Plaintiffs would limit the inquiry to Founding-era evidence. PI Mot. 13. But the operative clause was added in 1971, and *Vlaming* directs courts to “begin[] with a review of the drafting history” and, “[w]hen a constitutional provision has remained unchanged throughout Virginia constitutional history,” to “apply the original meaning of the provision when first adopted.” 302 Va. at 532. The converse follows where, as here, the provision was added in 1971, so its 1971 meaning governs. Either way, the result is the same; neither at the Founding nor in 1971 were assault firearms and large-capacity magazines (or any equivalent technology) commonly used for lawful self-defense by Virginians.

1. Large-capacity magazines are accessories, not protected “arms.”

A large-capacity magazine is not an “arm” as § 13 uses that term. It is not a bullet and contains no firing mechanism; it holds rounds and feeds them into a firearm, and “is a box that, by itself, is harmless.” *Duncan*, 133 F.4th at 867. A firearm functions for self-defense without one.

The historical record compiled by the Commonwealth confirms that the Founding generation did not understand “arms” to include firearm accessories. Detachable magazines did

not exist then. Until the late nineteenth century, “single-shot, muzzle-loaded” firearms were the ubiquitous guns in the United States. Ex. 2 ¶ 31 (DeLay). The term “arms” then referred to weapons themselves—typically swords, knives, rifles, and pistols. Ex. 3 ¶ 84 (Spitzer).

Virginia, moreover, has long regulated how many rounds a firearm may fire without reloading: it barred firearms holding more than seven rounds in 1934, 1934 Va. Acts ch. 137; Ex. 3 ¶ 36 (Spitzer), and restricted shotguns holding more than three shells for hunting in 1962, Va. Code § 29.1-519; 1962 Va. Acts ch. 469. Had the 1971 drafters meant to place magazine capacity beyond legislative reach, they knew how to say so. They did not. And large-capacity magazines were not in common civilian use in 1971 in any event; the number then in circulation was small and cannot be reliably quantified. *Cf.* Ex. 1 ¶¶ 35, 37 (Klarevas).

Federal courts have likewise held that large-capacity magazines are not “arms” under the Second Amendment—persuasive authority confirming the same conclusion under § 13’s narrower guarantee. *See, e.g., Duncan*, 133 F.4th at 867–68; *Bevis v. City of Naperville*, 85 F.4th 1175, 1195–97 (7th Cir. 2023); *Ocean State Tactical*, 646 F. Supp. 3d at 387–88. Plaintiffs do not argue otherwise. They nowhere contend that LCMs—or the other features SB749 regulates—are protected arms and so fail to carry their burden.

2. Assault firearms and large-capacity magazines are not in “common use” today for lawful self-defense.

In assessing whether a particular arm is protected, courts ask whether it is “in common use today for self-defense.” *Bruen*, 597 U.S. at 32. That inquiry also tracks § 13’s collective, militia-tethered guarantee, *see supra* Section II.B.1, so the answer is the same under either framework. Plaintiffs offer no evidence that assault firearms or large-capacity magazines meet that standard, and the Commonwealth’s undisputed evidence shows they do not.

The Second Amendment’s “central component” is lawful self-defense, *Heller*, 554 U.S. at 599; see *Bruen*, 597 U.S. at 32; *Bianchi*, 111 F.4th at 459, but the right does not reach every weapon. Plaintiffs read § 13 as “absolutist” and “contain[ing] no limitation on what arms one may acquire or transfer,” PI Mem. 11, but the right never had such breadth. *Heller* itself recognized that “weapons that are most useful in military service,” such as “M-16 rifles and the like,” may be “banned.” *Heller*, 554 U.S. at 627. That recognition resolves much of this case. The AR-15 “is almost the same gun as the M16 machinegun,” sharing “the same core design” and “the same patented operating system.” *Bevis*, 85 F.4th at 1195–96. A large-capacity magazine erases one of the few meaningful differences that remain—rate of fire—because while “M-16s have a higher fire capacity than AR-15s, . . . LCMs can greatly reduce the need to reload, allowing shooters to fire many rounds in a shorter amount of time.” *Ocean State Tactical*, 95 F.4th at 49. As a result, “semiautomatic weapons fitted with LCMs much more closely resemble the proscribable M-16 rifles and the like than they do traditional handguns.” *Id.* at 48–49.

These are weapons of war, not instruments of personal defense. They are not suited to the “ordinary self-defense needs” at the core of the right, *Bruen*, 597 U.S. at 60; *DiGiacinto*, 281 Va. at 134; *Bianchi*, 111 F.4th at 461. Rather, they were developed for Cold War battlefields in the 1950s and 1960s, Ex. 4 ¶ 57 (Roth), and they retain the muzzle velocity, range, and lethality engineered to kill at hundreds of yards, Ex. 5 ¶¶ 37–38, 60–62, 91, 115, 134 (Yurgealitis). Those features make them unnecessary and even counterproductive for civilian defense. A 5.56mm round meant to wound at battlefield distances risks over-penetrating walls and endangering bystanders and neighbors in the home. Ex. 5 ¶¶ 134–37 (Yurgealitis). That was as true in 1971 as it is today, and at the Founding repeating firearms were experimental curiosities, very rare in 1791. Ex. 2 ¶¶ 20, 44 (DeLay).

The record confirms how rarely these arms are used defensively. Significantly, an FBI dataset of active-shooter incidents from 2000 through 2024 records a defensive use of an assault firearm in only one incident—0.2%. Ex. 1 ¶ 78 (Klarevas). And across nearly 1,000 real-world self-defense incidents the Commonwealth’s expert examined, defenders almost never fired more than a few rounds. In the NRA’s Armed Citizen data, defenders fired 2.2 shots on average and only 0.3% fired more than ten; in a systematic sample of news-reported incidents, 97.3% fired five or fewer, and none fired more than ten. Ex. 6 ¶¶ 11, 20 (Allen). In Virginia, there were “no incidents where the defender was reported to have fired more than 10 shots.” *Id.* ¶ 13.

Nor are assault firearms commonly owned for any lawful purpose. Plaintiffs offer no expert evidence. They instead rest on two U.S. Supreme Court opinions, only one of which supplies a figure—a single Justice’s reference to AR-15s, unsourced and untethered to SB749’s definition. PI Mem. 16. The Commonwealth’s evidence establishes that “the number of assault firearms in circulation in the United States is unknown,” because the data gun advocates invoke suffer serious methodological flaws. Ex. 1 ¶¶ 14, 15–34 (Klarevas). The 1971 picture is starker: civilian AR-15 sales did not begin until 1964, Ex. 5 ¶ 99 (Yurgealitis), and civilians likely owned fewer than 15,000 nationwide in 1971, with only a few hundred sold in 1969 and 1970, after Colt pulled the rifle to fix a defect. *See* General Staff, “Estimating AR-15 Production 1964-2017,” Nov. 9, 2019, available at <https://perma.cc/X2RR-E5ZQ> (cited by Ex. 1 ¶ 15, n.15 (Klarevas)). The drafters and ratifiers of § 13 had no reason to treat these military arms as weapons ordinary citizens would own. *See* Ex. 5 ¶¶ 56-59, 91, 99–101 (Yurgealitis).

By contrast, genuinely common arms used for lawful self-defense purposes look nothing like this. At the Founding era, 50 to 60% of households owned a firearm, typically a single-shot, muzzle-loading long gun. Ex. 4 ¶ 15 (Roth). Today, the handgun is the “quintessential” self-

defense weapon and the arm Americans actually choose, *Heller*, 554 U.S. at 629, comprising roughly half of the firearms in the Nation. Ex. 1 ¶¶ 11, 34 (Klarevas). Assault firearms and LCMs, by contrast, are concentrated in a tiny fraction of owners, and to the extent they see much use today, the evidence ties it to mass shooters and violent criminals. Ex. 1 ¶¶ 28, 46, 54–58, 59–69 (Klarevas).

The Fourth Circuit’s reasoning, persuasive here if the Court adopts Plaintiffs’ mistaken theory that there is an individual right in § 13, is to the same effect. In *Kolbe v. Hogan*, the *en banc* court held that because assault weapons are “weapons that are most useful in military service,” they lie “outside the ambit of the Second Amendment.” 849 F.3d 114, 136 (4th Cir. 2017). *Bianchi* reaffirmed *Kolbe*, explaining that the common-use standard protects “only those weapons that are typically possessed by average Americans for the purpose of self-preservation and are not ill-suited and disproportionate to achieving that end.” 111 F.4th at 461. The AR-15, the court concluded, “is a combat rifle that is both ill-suited and disproportionate to self-defense” and “lies outside the scope” of the right. *Id.*

In sum, assault firearms are owned by a niche of Americans and are not commonly owned, much less commonly used for lawful, self-defense purposes. Nothing in the Supreme Court’s decisions suggests that a weapon’s popularity within a niche exempts it from the public safety laws the people’s representatives enact.

3. Assault firearms and large-capacity magazines are “dangerous and unusual.”

The right to bear arms “extends only to certain types of weapons” and confers no “right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.” *Heller*, 554 U.S. at 623, 626. It does not protect “dangerous and unusual” weapons, a category that includes the military arms *Heller* said “may be banned.” *Id.* at 627. Plaintiffs again offer no

evidence, though the burden is theirs, and the Commonwealth’s evidence shows that assault firearms fit the historical understanding of a “dangerous and unusual” weapon.

Assault firearms place military firepower in civilian hands, as their own marketing has long promised, urging buyers to arm themselves with what the military and police carry. Ex. 3 ¶¶ 74–75 (Spitzer). The consequences have been catastrophic. Assault firearms have been used in the overwhelming majority of the mass shootings that have proliferated in recent decades, Ex. 1 ¶¶ 64–69 (Klarevas); *see* Ex. 4 ¶¶ 62–64 (Roth), and the Fourth Circuit has found that “AR-15s are disproportionately used in mass shootings” and that such shootings “are over 60% more deadly when an AR-15 or similar assault rifle is used,” *Bianchi*, 111 F.4th at 456. Their offensive capabilities let a shooter kill or maim many people in seconds, before victims can flee or police can respond, and—even against responding officers—let an untrained shooter match police firepower. *See* Ex. 4 ¶¶ 59, 67, 68 (Roth).

For the same reasons, assault firearms are uniquely dangerous to law enforcement. Ex. 4 ¶¶ 59, 62 (Roth); Ex. 5 ¶ 7 (Yurgealitis); *see Bianchi*, 111 F.4th at 457 (“AR-15s and similar assault rifles are uniquely dangerous to law enforcement.”). They are used to ambush officers and resist arrest, and so police resort to even more aggressive tactics, including armored vehicles. *See* Ex. 4 ¶ 59 (Roth). In one analysis of firearms used to murder police officers, assault firearms accounted for over 13% and semiautomatic firearms equipped with large-capacity magazines for more than 40%. Ex. 1 ¶ 57 (Klarevas).

4. SB749 falls outside § 13.

Plaintiffs have not carried their step-one burden, let alone made the “clear showing” a preliminary injunction demands. The text of § 13 and its history—at the Founding and in 1971 alike—show no design to place assault firearms or large-capacity magazines beyond regulation.

Plaintiffs’ own affidavits confirm the point. They describe future private acquisitions of named semi-automatic rifles and large-capacity magazines for “self-defense, hunting, sport, and collecting.” PI Mem. 2; Crump Aff. ¶¶ 8–15; Chandler Decl. ¶¶ 4–11. None ties those acquisitions to militia service, and no Plaintiff claims membership in the Virginia National Guard, the Virginia Defense Force, or any other component of the organized militia. *See* Va. Code §§ 44-1 to 44-3. The affidavits describe individual desires for individual acquisitions, untethered to the collective militia purpose § 13 protects.

Even on the broader reading Plaintiffs urge—that § 13 secures an individually held right—they fare no better. The Commonwealth’s authority to regulate the private market in military-style arms, the very authority the 1971 ratifying public was assured would remain intact, sits comfortably within that reading. Either way, Plaintiffs have not shown a likelihood that § 13 forbids SB749.

D. Even if § 13 reached assault firearms and large-capacity magazines, Virginia’s tradition of regulating dangerous weapons sustains SB749.

The inquiry should end at step one. But if the Court reaches step two, Plaintiffs lose under either framework and for the same reason. They offer no evidence, while the Commonwealth’s uncontroverted record shows SB749 fits a regulatory tradition as old as the Republic. Under the Virginia methodology, SB749 is reasonably fitted to the Commonwealth’s substantial public-safety interest and narrowly focused on the harms the General Assembly identified. The federal *Bruen* framework, persuasive here, yields the same result: SB749 is “consistent with the Nation’s historical tradition of firearm regulation,” *Bruen*, 597 U.S. at 24, because it answers an “unprecedented societal concern” driven by “dramatic technological changes”—the epidemic of mass shootings committed with assault firearms and large-capacity magazines—so the “more nuanced” approach to historical analogy applies, *id.* at 27, and the law imposes a burden

“comparably justified” to its historical analogues, *id.* at 29. And the same history that defeats Plaintiffs under *Bruen* confirms what § 13’s own ratification record already shows: the 1971 drafters preserved the Commonwealth’s authority to regulate these arms. *See supra* Section II.B.1.

1. *SB749 addresses unprecedented societal concerns and dramatic technological changes that have arisen only recently.*

Bruen establishes that “cases implicating unprecedented societal concerns or dramatic technological changes may require a more nuanced approach” to the historical inquiry. 597 U.S. at 27. That is this case. SB749 addresses a dramatic technological change—rapid-fire semi-automatic assault firearms and large-capacity magazines—and the unprecedented societal concern of mass shootings. These are modern arms. The AR-15’s design dates only to the late 1950s, and it was created for military use; civilian sales in significant numbers came later. Ex. 5 ¶¶ 56–59, 99 (Yurgealitis). LCMs, too, are a modern phenomenon with military roots. *Id.* ¶¶ 93, 97–98, 112. The Court should therefore engage in “a broader search for historical analogies.” *United States v. Rowson*, No. 22-cr-310, 2023 WL 431037, at *24 (S.D.N.Y. Jan. 26, 2023); *see also Duncan*, 133 F.4th at 873 (similar).

The Fourth Circuit endorsed this approach in *Bianchi*, describing the mass-shooting crisis as “unheard of and likely unimaginable at the founding.” 111 F.4th at 463. Firearms in the Colonial and Founding eras could not be stored loaded, were liable to misfire, could not fire multiple rounds without re-loading, and took at least half a minute to load per round. Ex. 4 ¶ 16 (Roth). They had limited utility as murder weapons; though 50 to 60% of households owned a working firearm, homicide rates were exceptionally low through most of the eighteenth century, and only 10 to 15% of homicides were committed with a gun. *Id.* ¶¶ 14–16.

By contrast, with minimal training, the user of an assault firearm equipped with an LCM can fire 40 to 50 rounds per minute. Ex. 5 ¶ 149 (Yurgealitis). Given the extraordinary muzzle

velocity of the rounds these weapons fire, “[t]he danger these firearms pose is intrinsically different from past weaponry.” Ex. 4 ¶ 62 (Roth). Their destructive power exceeds even that of the fully automatic Tommy gun, whose regulation is unquestionably constitutional. *See DeWilde v. United States*, No. 23-CV-0003, 2023 WL 4884582, at *6 (D. Wyo. July 17, 2023) (federal courts of appeals have “uniformly” held machine guns unprotected), *aff’d*, 2024 U.S. App. LEXIS 8590 (10th Cir. Apr. 10, 2024).

SB749 also responds to the unprecedented concern of mass shootings. For more than 170 years—from 1776 to 1948—not a single known mass shooting in the United States produced ten or more fatalities. Ex. 1 ¶ 59 (Klarevas). There have been more such double-digit fatality shootings since 2017 than in the Nation’s first 224 years. *Id.* ¶ 64. A federal ban on assault weapons slowed the trend until it expired in 2004, after which there have been at least 20 double-digit fatality mass shootings, *id.*, ¶¶ 60, 62, with the number still climbing, *Oregon Firearms Fed’n v. Kotek*, 682 F. Supp. 3d 874, 897 (D. Or. 2023). Two occurred in Virginia, one among the deadliest in American history. In 75% of the fatality shootings resulting in more than 20 deaths, the shooter used an assault firearm. Ex. 1 ¶ 66 (Klarevas). Such “incidents of singular and concentrated violence against civilians are unprecedented” and would have been unimaginable in 1791 or 1868. *Kotek*, 682 F. Supp. 3d at 925; *see also Bianchi*, 111 F.4th at 463–64 (“[t]hese are not our forebears’ arms, and these are not our forebears’ calamities.”).

2. Virginia and the Nation have a long tradition of regulating dangerous weapons.

Our history reveals a settled pattern: as new weapons technologies emerge, proliferate, and create criminological problems, lawmakers regulate them in the interest of public safety. Ex. 3 ¶¶ 12, 43 (Spitzer). SB749 follows that pattern exactly, “demonstrating that there is a longstanding tradition of the government exercising its power to regulate new and dangerous weapon technology.” *Nat’l Ass’n for Gun Rts. v. Lamont*, 685 F. Supp. 3d 63, 110 (D. Conn. 2023), *aff’d*,

153 F.4th 213 (2d Cir. 2025). The tradition reaches back to the colonies. As early as 1670, jurisdictions prohibited “trap guns”—devices rigged to fire remotely when a string or wire was tripped, often in a misguided effort to protect property; at least 27 states ultimately enacted anti-trap-gun laws. Ex. 3 ¶¶ 107, 108 (Spitzer).

Regulation of dangerous weapons continued through the early 19th century and Reconstruction. After the Revolution, interpersonal violence rose, often involving concealable knives and pistols, and legislatures responded. Ex. 4 ¶¶ 23–24 (Roth). Beginning in 1813, several states including Virginia barred the possession or concealed carry of weapons “used in an alarming proportion of the era’s murders and serious assaults,” including deadly knives. Ex. 4 ¶¶ 24, 26 (Roth). Prominent among them was the Bowie “fighting knife,” regulated at a time when single-shot pistols were still “unreliable and inaccurate.” Ex. 3 ¶ 86 (Spitzer). From the 1830s to the early twentieth century, every State plus the District of Columbia restricted Bowie knives—at least 41 by name—and 19 banned them outright. Ex. 3 ¶ 92 (Spitzer).

As firearm technology advanced, lawmakers imposed new restrictions. “By the end of the 1800s, nearly every state in the country” restricted concealed carry of revolvers and other concealable pistols, “and, by the early 1900s, at least six states barred possession of these weapons outright.” *DSSA*, 664 F. Supp. 3d at 601 (citing Spitzer). Then the first large-capacity repeating firearms for individual use arrived. The Tommy gun reached the commercial market in the 1920s and quickly became the most notorious. Ex. 3 ¶ 14 (Spitzer).

Lawmakers responded promptly. Numerous States, including Virginia, restricted semi-automatic weapons in the 1920s and 1930s, as those weapons began to circulate, and the federal National Firearms Act of 1934 imposed strict requirements on the civilian acquisition of fully automatic weapons. Ex. 3 ¶ 11 (Spitzer); *see also* Ex. 2 ¶ 80 (DeLay).

These same decades produced a magazine-capacity tradition directly on point. At least 26 States, including Virginia, restricted ammunition-magazine capacity between the 1910s and 1930s, ranging from more than one round (Massachusetts and Minnesota) up to 18 (Ohio). Ex. 3 ¶ 11 (Spitzer). Virginia itself imposed a seven-round limit in 1934. 1934 Va. Acts ch. 137. And 22 of those 26 States capped capacity at 15 rounds or fewer—the very line SB749 draws. Ex. 3 ¶ 11 (Spitzer). Federal gun regulations were also enacted from the 1960s to the 1990s. These included the Gun Control Act of 1968 and the assault weapons ban of 1994. Ex. 3 ¶¶ 117, 120 (Spitzer).

In Virginia, the history of firearm and accessory restrictions is similarly long, and much of it predates § 13. It includes the semi-automatic gun restrictions dating to the 1930s, 1934 Va. Acts ch. 137, the shotgun magazine-capacity limit for hunting enacted in 1962, Va. Code § 29.1-519; 1962 Va. Acts ch. 469, and an anti-trap gun law in 1966, Va. Code § 18.2-281, 1966 Va. Acts. Ch. 422. It also includes Virginia’s first laws criminalizing public carrying of arms (1786) and concealed dangerous weapons (1838). Ex. 3 ¶¶ 83, 104 (Spitzer); *see also* Ex. 2 ¶ 97 (DeLay). And during the debates over § 13, the sponsors assured their colleagues that the amendment would not preclude gun regulation. Senate Debates 392–93; House Debates 473–74; *see supra* Section II.B.1; *see also Ginevan v. Commonwealth*, 83 Va. App. 1, 21–27 (2024), *appeal granted* 2025 Va. LEXIS 35 (Va. June 30, 2025) (collecting historical gun control measures in Virginia and elsewhere); *Watkins v. Commonwealth*, 83 Va. App. 456, 469–482 (2025) (similar). The fact that Virginia first restricted semi-automatic weapons in 1934 demonstrates that SB749 falls squarely within Virginia’s long history of gun restrictions. Ex. 3 ¶ 36 (Spitzer).

Virginia courts have likewise upheld firearm restrictions, from *DiGiacinto*, through a series of Court of Appeals and circuit court decisions rejecting Second Amendment challenges to felon-in-possession, machine-gun, and place-based firearm laws. *See, e.g., Fleming v. Commonwealth*,

85 Va. App. 27 (2025); *Ginevan*, 83 Va. App. at 28; *LaFave v. County of Fairfax*, 2023 Va. Cir. LEXIS 203 (Fairfax June 23, 2023).

The history compiled by Defendant is uncontroverted: since before the Founding, lawmakers have restricted dangerous weapons, features, and accessories to protect the public. SB749 falls comfortably within that tradition, and therefore within the bounds of § 13.

3. *SB749 is relevantly similar to those historical regulations.*

The laws above—a 300-plus year tradition of regulating “highly dangerous arms (and related dangerous accessories),” *Bevis*, 657 F. Supp. 3d at 1073—are relevantly similar to SB749 along both *Bruen* metrics regarding how and why they burden the right to armed self-defense. 597 U.S. at 29. The U.S. Supreme Court itself said in *Heller* that “laws imposing conditions and qualifications on the commercial sale of arms” are “presumptively lawful.” 554 U.S. at 626–27 & n.26; *see DiGiacinto*, 281 Va. at 134–35. SB749’s chief focus is precisely the future sale of assault firearms and LCMs.

SB749 burdens lawful self-defense little, if at all, and no more than its historical analogues did. As shown above, assault firearms and LCMs are neither in common use nor suitable for self-defense, *see supra* Sections II.C.1–2, and SB749 leaves Virginians free to acquire and use the vast range of firearms that fall outside its definition, along with every magazine holding 15 rounds or fewer. That is, at most, a “slight” burden. *DSSA*, 664 F. Supp. 3d at 602; *Hartford v. Ferguson*, 676 F. Supp. 3d 897, 907 (W.D. Wash. 2023). It is far lighter than the burdens in *Heller* and *Bruen*, which restricted handguns themselves—the “quintessential” self-defense weapon. *Heller*, 554 U.S. at 629; *see Bruen*, 597 U.S. at 74 (Alito, J., concurring). And whatever minimal burden SB749 imposes is justified by the same concern that motivated those historical laws: protecting the public from unusually dangerous weapons susceptible to criminal misuse. If the Court reaches *Bruen*’s step two, Defendant has met the burden.

4. *SB749 independently satisfies step two of the Virginia methodology.*

Under the Virginia methodology, the question is whether SB749 is sufficiently tailored to the Commonwealth’s substantial—indeed *compelling*—public-safety interest. It is. *Vlaming* confirms that Virginia courts interpret state guarantees on their own terms while recognizing that even fundamental rights may yield to limiting principles grounded in public safety, peace, and order. There is no reason to single out § 13 for different treatment. The Court need not fix a precise tier of scrutiny, because Plaintiffs cannot prevail under any plausible formulation.

a. *The Commonwealth’s public-safety interest is substantial.*

Few governmental interests are weightier than public safety. *See Schenck v. Pro-Choice Network of W.N.Y.*, 519 U.S. 357, 376 (1997). The General Assembly enacted SB749 against a documented, growing record of mass-casualty events involving semi-automatic rifles equipped with large-capacity magazines, and federal appellate courts reviewing analogous laws have repeatedly credited the same concerns. The legislature may rely on its findings and the record, and once it acts within constitutional bounds, courts do not second-guess the wisdom of its policy choices. *Howell v. McAuliffe*, 292 Va. 320, 326 (2016). Plaintiffs offer no contrary empirical record. They challenge the General Assembly’s judgment but do not rebut it.

b. *SB749 is reasonably adapted to that interest and is narrower than Plaintiffs suggest.*

A regulation is reasonably adapted when it addresses the identified harm without sweeping more broadly than necessary. SB749 does that. It targets a defined category of assault firearms and accessories that the record links to elevated lethality in mass-casualty events, and it leaves untouched ordinary handguns—the “quintessential self-defense weapon,” *Heller*, 554 U.S. at 629—the much larger universe of non-covered firearms, and all magazines holding 15 rounds or fewer. It is also narrower than Plaintiffs portray; it does *not* criminalize possession of covered

assault firearms lawfully acquired before July 1, 2026, but instead regulates future importation, sale, purchase, and transfer while preserving channels for existing owners (sale to a dealer or lawful out-of-state recipient, temporary transfer to an FFL or gunsmith and return, inheritance, and immediate-family gifts). The magazine provision likewise imposes no general possession ban.

c. The burden on any asserted right is modest and does not outweigh the Commonwealth's interest.

The Virginia methodology does not require the government to show no burden at all—only that the burden be proportionate to the interest served. The burden here is modest by every measure. *See supra* Section II.D.3. Plaintiffs' own affidavits confirm it. Crump describes intended future acquisitions, not the loss of arms he relies on for self-defense, Crump Aff. ¶¶ 8–15, and Chandler's Firearms describes lost commercial sales, not impaired self-defense, Chandler Decl. ¶¶ 4–11. Those interests are not the weighty self-defense interest that could tip the balance against a substantial public-safety regulation. *See DiGiacinto*, 281 Va. at 137. Under any standard the Court might apply, the General Assembly's judgment survives review, and the preliminary injunction should be denied.

III. The balance of equities and the public interest favor upholding SB749.

Both remaining factors decisively favor the Commonwealth, and where the Commonwealth is the party opposing an injunction, the equities and the public interest merge into a single inquiry. *See Nken v. Holder*, 556 U.S. 418, 435 (2009). Plaintiffs bear the burden on both, and they cannot carry it. Their motion rests on cursory affidavits, unsupported by any data or analysis, and it identifies no harm beyond a speculative wish to acquire additional arms in the future—while Plaintiffs remain free to keep everything they already own and to acquire a wide array of lawful alternatives. *See supra* Sections II.D.4(b)–(c). There is thus little, if anything, on Plaintiffs' side of the equitable scale.

On the other side sits a weighty and concrete public interest. There is a significant public interest in reducing the risk of gun violence, and the record documents the elevated lethality that assault firearms and large-capacity magazines bring to mass-casualty events. *See supra* Sections II.C.3 & II.D.1. Enjoining SB749 would expose the public to precisely that danger. It would also inflict a distinct institutional injury, because as mentioned *supra*, any time a State is enjoined from implementing a statute that its legislature has enacted, it suffers irreparable injury. *Maryland*, 567 U.S. at 1303 (Roberts, C.J., in chambers). That injury is especially acute here, where SB749 is presumptively constitutional, *see Montgomery Cnty.*, 282 Va. at 435, and was enacted through the democratic process to protect Virginians from a documented and growing harm. Because “courts of equity should pay particular regard for the public consequences in employing the extraordinary remedy of injunction,” *Winter*, 555 U.S. at 24, the balance tips decisively against the relief Plaintiffs seek. Accordingly, Plaintiffs’ motion should be denied.

CONCLUSION

For these reasons, Plaintiffs have not carried their burden to justify the extraordinary remedy of preliminary injunctive relief. The Court should deny Plaintiffs’ motion.

[SIGNATURES ON FOLLOWING PAGE]

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