IN THE SUPREME COURT OF VIRGINIA

Record No. 20-_____

GUN OWNERS OF AMERICA, INC., et al.,
Petitioners,

v.

HON. RALPH S. NORTHAM, in his official capacity as Governor of the Commonwealth of Virginia, &
COLONEL ANTHONY S. PIKE, in his official capacity as Chief of the Division of Capitol Police,
Respondents.

RESPONSE IN OPPOSITION TO EMERGENCY PETITION FOR REVIEW

MARK R. HERRING
Attorney General

VICTORIA N. PEARSON
Deputy Attorney General

TOBY J. HEYTENS (#90788)
Solicitor General

MICHELLE S. KALLEN (#93286)
MARTINE E. CICCONI (#94542)
Deputy Solicitors General

JESSICA MERRY SAMUELS (#89537)
Assistant Solicitor General

ZACHARY R. GLUBIAK (#93984)
John Marshall Fellow

Office of the Attorney General
202 North Ninth Street
Richmond, Virginia 23219
(804) 786-7240 (phone)
(804) 371-0200 (fax)
SolicitorGeneral@oag.state.va.us

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Constitutional Provisions

Statutes

Other Authorities

INTRODUCTION

On August 12, 2017, three Virginians were killed and dozens were injured during a permitted rally that turned violent in Charlottesville. "Opposing groups arrived early, armed and ready for conflict, many traveling from across the country to participate. Violent clashes ensued between protesters and counter protesters."[1]

In recent days, the Governor received "[c]redible intelligence . . . that tens of thousands of advocates plan to converge on Capitol Square for events culminating on January 20, 2020." Executive Order Forty-Nine at 1 (Northam) (EO). In particular, "[a]vailable information suggests that a substantial number of these demonstrators are expected to come from outside the Commonwealth, may be armed, and have as their purpose not peaceful assembly but violence, rioting, and insurrection." *Id.*

Determined to prevent another tragedy, the Governor issued a carefully limited Executive Order. The Order does not prevent anyone from speaking, assembling, or petitioning the government. Instead, it

---

[1] *Virginia's Response to the Unite the Right Rally: After-Action Review* at 1 (Dec. 2017), https://www.pshs.virginia.gov/media/governorvirginiagov/secretary-of-public-safety-and-homeland-security/pdf/iacp-after-action-review.pdf.

temporarily precludes private possession of firearms in a sensitive public place during a specified time to protect public safety and safeguard the rights of all citizens to peacefully speak, assemble, and petition their government.

Petitioners challenge the circuit court's denial of a temporary injunction. But the court acted well within its discretion, and petitioners fail to show a likelihood of success on the merits or that the balance of equities or public interest favors "the extraordinary remedy" they seek. *Winter v. NRDC*, 555 U.S. 7, 24 (2008). The petition for review should be denied.

STATEMENT

1. Throughout the fall, petitioners and others advertised a rally scheduled for "Lobby Day" at the Virginia State Capitol. The event has become an Internet phenomenon, "expected to draw white supremacists and other anti-government extremists."[2] Petitioner Virginia Citizens Defense League "told the state to prepare for as many as 50,000 or even 100,000 people" and that, although the "organization typically charters

[2] Williams et al., *Virginia Capital on Edge as F.B.I. Arrests Suspected Neo-Nazis Before Gun Rally*, N.Y. Times (Jan. 16, 2020), https://www.nytimes.com/2020/01/16/us/politics/fbi-arrest-virginia-gun-rally.html.

three buses," "this year, [they have] already chartered 23 buses and other groups have reserved 28—and the number is climbing."[3] Among those expected are "[l]eaders of various chapters of the Light Foot Militia," some of whom were banned from Charlottesville after the Unite the Right rally.[4]

As Internet traffic ballooned, so did threats of violence. One prospective attendee has "espouse[d] violent rhetoric while discussing Virginia's gun laws and has even showed people how to best equip their assault weapons for battle."[5] Just yesterday, "the F.B.I. announced the arrest . . . of three armed men suspected of being members of a neo-Nazi hate group . . . who had obtained weapons and discussed participating in the Richmond rally."[6]

---

[3] Schneider & Vozzella, *Prospect of Gun Control in Virginia Draws Threats, Promise of Armed Protest*, Wash. Post (Jan. 5, 2020), https://www.washingtonpost.com/local/virginia-politics/prospect-of-gun-control-in-virginia-draws-threats-promise-of-armed-protest/2020/01/05/7e9b230c-2e38-11ea-bcd4-24597950008f_story.html.

[4] Williams, *supra* note 2.

[5] Johnson, *As Virginia Gun Rally Approaches, Alex Jones and His Infowars Outlet Hype Prospect of Violence* (Jan. 15, 2020), https://www.mediamatters.org/alex-jones/virginia-gun-rally-approaches-alex-jones-and-his-infowars-outlet-hype-prospect-violence.

[6] Williams, *supra* note 2.

2. On January 15, 2020, the Governor issued the Executive Order. As the Order explains, the Governor's overriding concern was preventing a reprise of the tragedy that occurred in Charlottesville. EO 1. After the City of Charlottesville revoked a permit to hold a rally in a park containing a statue of Robert E. Lee, organizers obtained a court order requiring the City to allow the rally to go forward in the original location. *Kessler v. Charlottesville*, No. 3:17CV00056, 2017 WL 3474071, at *2 (W.D. Va., Aug. 11, 2017) (concluding that "there [wa]s no evidence to support the notion that many thousands of individuals are likely to attend the demonstration"). The rally quickly turned violent, three people were killed, and dozens more were wounded. EO 1. As the Governor explained in the Executive Order, "[w]e must take all precautions to prevent that from ever happening again." *Id.*

The Order next summarizes the concerns giving rise to the Governor's decision. It explains that "[c]redible intelligence gathered by Virginia's law enforcement agencies indicates that tens of thousands of advocates plan to converge on Capitol Square for events culminating on January 20, 2020." EO 1. "Available information suggests that a substantial number of these demonstrators are expected to come from

outside the Commonwealth, may be armed, and have as their purpose not peaceful assembly, but violence, rioting, and insurrection." *Id.*[7] Accordingly, the Governor declared "that a state of emergency will exist starting on January 17, 2020 through January 21, 2020." *Id.*

Petitioners challenge neither the need to declare a state of emergency nor two of the three actions ordered by the Governor. Instead, petitioners limit their challenge to "Paragraph C of the EO as it applies to firearms." Pet. 6. That provision declares that—during the four-day emergency period—"no weapons, including firearms, may be carried or possessed" within a carefully circumscribed area of state-owned property around the State Capitol. EO 2.

3. The next day, petitioners filed suit and sought a temporary injunction. After a hearing, the court denied petitioners' application.

STANDARD OF REVIEW

A circuit court's denial of injunctive relief is reviewed solely for an abuse of discretion. *McCauley v. Phillips*, 216 Va. 450, 454 (1975). Under that standard, "this Court defers to the circuit court's ruling and

[7] Because petitioners expressly conceded the need to declare an emergency during the hearing before the circuit court, more specific evidence beyond publicly available information was not provided to the circuit court despite the undersigned's offer to do so.

does not reverse merely because it would have come to a different result." *May v. R.A. Yancy Lumber Corp.*, 297 Va. 1, 18 (2019) (citation omitted).

"No Virginia Supreme Court case has definitively set out standards to be applied in granting or denying a [temporary] injunction." *School Bd. of Richmond v. Wilder*, No. CL07-1609-1, 2007 WL 6013154, at *2 (Richmond Cir. Ct. 2007). As a result, Virginia courts have generally "followed [the] standards delineated in the four-part test used by the federal courts." *Id.*

"A preliminary injunction is an extraordinary remedy never awarded as of right." *Winter*, 555 U.S. at 24. Rather, "courts must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief." *Id.* (citation omitted). In all cases, the party seeking emergency injunctive relief "must establish [1] that he is likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in the absence of preliminary relief, [3] that the balance of equities tips in his favor, and [4] that an injunction is in the public interest." *Id.* at 20.

ARGUMENT

The circuit court acted well within its discretion in concluding that petitioners failed to establish their entitlement to the "extraordinary remedy" of a temporary injunction. *Winter*, 555 U.S. at 24. The circuit court properly found that the Executive Order was constitutional and within the scope of the Governor's authority. Nor can petitioners establish that the balance of equities or the public interest warrant granting a temporary injunction.

I. The circuit court did not abuse its discretion in concluding petitioners were unlikely to succeed on the merits

A. The Executive Order is constitutional

Petitioners assert without substantial argument that the Governor's Executive Order "violates multiple state and federal constitutional provisions." Pet. 9. But petitioners' cursory treatment fails to carry their burden on the point.[8]

1. No violation of the right to bear arms

Both the federal and state constitutions recognize "an individual right to keep and bear arms." *District of Columbia v. Heller*, 554 U.S.

[8] Although petitioners suggest that the Order violates Article I, Section 7 of the Virginia Constitution, they fail to identify any specific "laws" the Governor has "suspend[ed]." Pet. 9.

570, 595 (2008); accord *DiGiacinto v. George Mason Univ.*, 281 Va. 127, 134 (2011) (describing "the protection of the right to bear arms expressed in Article I, § 13 of the Constitution of Virginia" as "co-extensive with the rights provided by the Second Amendment of the United States Constitution").[9]

But that individual right, "[l]ike most rights," is "not unlimited." *Heller*, 554 U.S. at 626. "[J]ust as [the U.S. Supreme Court] do[es] not read the First Amendment to protect the right of citizens to speak for *any purpose*," it does not "read the Second Amendment to protect the right of citizens to carry arms for *any sort* of confrontation." *Id.* at 595; accord *DiGiacinto*, 281 Va. at 135 ("[T]he right to keep and bear arms is not a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose." (citation omitted)). Although the Court has not defined "the full scope of the Second Amendment," it has begun to illuminate its outer limits by identifying certain

[9] Although *DiGiacinto* reserved whether Article I, § 13 might extend beyond the Second Amendment in certain circumstances, see 281 Va. at 134, the Court need not consider that question. Petitioners do not argue their rights under the state constitution are more extensive than under the federal. And the current procedural posture—an expedited appeal from the denial of a temporary injunction—provides a particularly inapt vehicle for a significant new constitutional holding.

"presumptively lawful" regulations—including those "forbidding the carrying of firearms in sensitive places such as schools and government buildings." *Heller*, 554 U.S. at 626–27 & n.26.

a. Petitioners have no constitutional right to carry firearms in Capitol Square

The circuit court correctly recognized that "the Second Amendment right to bear arms is not unlimited" and does not extend to sensitive locations such as Capitol Square. Circuit Court Order 2.

It is undisputed that the Executive Order does not affect the core Second Amendment right "to use arms in defense of hearth and home." *Heller*, 554 U.S. at 635. The Order prohibits firearms only within a limited place for a limited time. As other courts have recognized, "[w]hen a [S]tate bans guns merely in particular places, . . . a person can preserve an undiminished right of self-defense by not entering those places." *United States v. Class*, 930 F.3d 460, 465 (D.C. Cir. 2019) (citation omitted).

Neither the U.S. Supreme Court nor this Court has ever expressly extended the right to keep and bear arms beyond the home, and this Court should decline petitioners' invitation to break new constitutional ground in these expedited equitable proceedings. See *United States v.*

Masciandaro, 638 F.3d 458, 475 (4th Cir. 2011) (Wilkinson, J.) (noting "the dilemma" courts face about "how far to push *Heller* beyond its undisputed core holding," because "[w]e do not wish to be even minutely responsible for some unspeakably tragic act of mayhem because in the peace of our judicial chambers we miscalculated as to Second Amendment rights"). Extending *Heller* beyond its bounds would be particularly inappropriate here, given that the most analogous precedents indicate that the Executive Order does not implicate petitioners' Second Amendment rights. See *Class*, 930 F.3d at 464 ("[T]he same security interests which permit regulation of firearms 'in' government buildings permit regulation of firearms on the property surrounding those buildings."); accord *Bonidy v. U.S. Postal Serv.*, 790 F.3d 1121, 1123 (10th Cir. 2015) (rejecting challenge to law barring firearms in post office parking lot because the "right to bear arms has not been extended to government buildings" (quotation marks omitted)).

b. The Executive Order satisfies any level of constitutional scrutiny

Even if the Executive Order implicated the individual right to bear arms, the Order would be subject to—and comfortably survive—intermediate scrutiny.

As the Fourth Circuit has explained, "intermediate scrutiny is more appropriate than strict scrutiny" for situations outside "the core right identified in *Heller*." *United States v. Chester*, 628 F.3d 673, 683 (4th Cir. 2010). "[A]s we move outside the home, firearm rights have always been more limited, because public safety interests often outweigh individual interests in self-defense." *Masciandaro*, 638 F.3d at 470; see *id.* (contrasting the "home, where the core *Heller* right applies," with "a public park"). Accordingly, the Fourth Circuit has correctly concluded "that intermediate scrutiny applies to laws that burden any right to keep and bear arms outside of the home." *Woollard v. Gallagher*, 712 F.3d 865, 876 (4th Cir. 2013) (citation omitted). Under that standard, "the government must demonstrate . . . a reasonable fit between the challenged regulation and a substantial government objective." *Chester*, 628 F.3d at 683 (citation omitted).

The Executive Order satisfies both parts of that test. The Order is motivated by several substantial government objectives—including ensuring the safety of "those who come to participate in the democratic process, . . . those who work on or near Capitol Square," and law-enforcement officials tasked with their protection. EO 1; see *Kolbe v.*

Hogan, 849 F.3d 114, 139 (4th Cir. 2017) (en banc) (describing the "interest in the protection of [a State's] citizenry and the public safety [a]s not only substantial, but compelling").

Those objectives are readily advanced by the Executive Order such that the "reasonable fit" standard is satisfied. See *United States v. Chapman*, 666 F.3d 220, 231 (4th Cir. 2012) (emphasizing that intermediate scrutiny does not demand a "perfect fit," only a reasonable one). The Governor issued the Order based on "[c]redible intelligence" that "a substantial number" of demonstrators "are expected to come from outside the Commonwealth, may be armed, and have as their purpose . . . violence, rioting, and insurrection." EO 1; accord pp. 3–5, *supra*. In response, the Order imposes narrow restrictions that apply only to a certain place for a limited time and directly address the precise nature of the threats that prompted those restrictions.

2. No violation of free speech or assembly

Because "Article I, § 12 of the Constitution of Virginia is coextensive with the free speech provisions of the federal First Amendment," *Elliott v. Commonwealth*, 267 Va. 464, 473–74 (2004), we address petitioners' claims under those two provisions jointly.

a. No one is prevented from speaking or assembling

The Executive Order does not close Capitol Square during daylight hours. It does not bar anyone from peaceably assembling or protesting, nor does it attempt to regulate the content of anyone's speech. Unlike the unsuccessful attempt to move the Unite the Right rally, the Order does not direct protestors away from any particular area. To the contrary, petitioners are free to assemble in the very square in which their demonstrations have historically been held and to express their opinions in myriad ways—by carrying signs, marching, chanting, and wearing any clothing or displaying any symbols they choose.

The Executive Order prohibits the carrying of weapons in Capitol Square. But petitioners cite no case holding that *carrying a firearm* is protected by *the First Amendment*, and we are not aware of any such case. See Pet. 10 (citing *Nordyke v. King*, 319 F.3d 1185, 1189 (9th Cir. 2003), which rejected—in the sentence immediately preceding the one petitioners quote—a First Amendment challenge to an ordinance banning firearms at gun shows). And even if carrying a firearm could conceivably constitute expressive conduct under some circumstances,

the weight of authority indicates petitioners are unlikely to succeed on the merits of their claim. See *Nordyke*, 319 F.3d at 1190 ("Typically a person possessing a gun has no intent to convey a particular message, nor is any particular message likely to be understood by those who view it."); *Burgess v. Wallingford*, No. 11-cv-1129, 2013 WL 4494481, at *9 (D. Conn. May 15, 2013) ("Carrying a weapon alone is generally not associated with expression.").

b. Any restriction is justified by the interests in protecting public safety and safeguarding everyone's constitutional rights

In *United States v. O'Brien*, 391 U.S. 367, 376 (1968), the U.S. Supreme Court held that "when 'speech' and 'non-speech' elements are combined in the same course of conduct, a sufficiently important governmental interest in regulating the nonspeech element can justify incidental limitations on First Amendment freedoms." In particular, "a government regulation is sufficiently justified if": (1) "it is within the constitutional power of the Government"; (2) "it furthers an important or substantial governmental interest"; (3) "the governmental interest is unrelated to the suppression of free expression"; and (4) "the incidental

restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest." *Id.* at 377.

The Executive Order easily passes that test. The government has the power to prohibit firearms in sensitive public spaces. See Part I(A)(1), *supra.* Protecting the public from imminent threats of violence is an important governmental interest unrelated to the suppression of speech. And the Order's careful limitations on the time and place of the restrictions—and the tight connection between those restrictions and imminent, credible threats—establish that the challenged restrictions are no greater than necessary to the furtherance of that interest. Accord *Nordyke v. King*, 644 F.3d 776, 794 (2011) (upholding prohibition of gun shows under *O'Brien* because the interest in "reduc[ing] of gun violence on county property" justified any incidental limitation on expressive conduct), *affirmed in relevant part on reh'g en banc*, 681 F.3d 1041, 1043 n.2 (9th Cir. 2012). Petitioners have therefore failed to make the necessary showing for the "extraordinary remedy" they seek. *Winter*, 555 U.S. at 24.[10]

[10] Petitioners insist that the circuit court committed reversible err by "failing . . . to address" their Free Speech claims. Pet. 15. As an initial matter, the complaint is unclear about whether petitioners were

B. The Governor had the authority to issue the Executive Order

Petitioners also challenge the Governor's authority to issue the Executive Order, asserting that "[t]he plain and unambiguous language of Virginia Code § 44-146.15(3) expressly prohibits the Governor from using a declaration of a state of emergency to do precisely what he purports to do via Paragraph C of the EO." Pet. 8. That argument fails for two independent reasons.

1. First, as the circuit court recognized, the referenced provision is specifically limited to only *one* of the various sources of authority on which the Governor relied here: the Emergency Services and Disaster Law (Emergency Law). See EO 1 (citing various constitutional and statutory sources of authority). Code § 44-146.15(3) is the third in a series of provisions introduced by the words "[n]othing in this chapter"—that is, the Emergency Law. And the very first provision in that series underscores that "[n]othing in this chapter"—

---

asserting any independent First Amendment claims because it referenced that Amendment only in support of petitioner's alleged irreparable harm. Complaint ¶ 20. Even if petitioners had made such a claim, the circuit court's denial of a temporary injunction "necessarily reflects" a judgment that petitioners failed to establish sufficient likelihood of success to warrant equitable relief. *James v. Falls Church*, 280 Va. 31, 41 (2010).

including Code § 44-146.15(3) —"shall be construed to: (1) [l]imit, modify, or abridge the authority of the Governor to exercise any powers vested in him under *other laws of this Commonwealth* independent of, or in conjunction with, any provisions of this chapter." Code § 44-146.15(1). Put simply, if the Governor had some source of authority to issue the Executive Order that is external to the Emergency Law, Section 44-146.15(3) is—by its own terms—irrelevant.

As the circuit court correctly found, the Governor had multiple other sources of authority to temporarily restrict firearms on Capitol Square. Circuit Court Order 2 ("[T]he Court FINDS that the Governor . . . has sufficient authority outside of the . . . Emergency Services and Disaster Law . . . by which he could enact Executive Order Forty-Nine."). Indeed, both the Constitution and other provisions of the Code authorize the Governor to do so.

a. Under the Constitution, the Governor possesses the "chief executive power of the Commonwealth." Va. Const. art. V, § 1. The Governor is also the "commander-in-chief of the armed forces of the Commonwealth" and has the "power to embody such forces to repel invasion, suppress insurrection, and enforce the execution of the laws."

Id. § 7. Protecting public safety from violence—and ensuring that citizens may exercise their own rights free from such violence—is a quintessential executive function. See *Schenck v. Pro-Choice Network*, 519 U.S. 357, 393 (1997) (Scalia, J., dissenting) ("We have in our state and federal systems a specific entity charged with responsibility for initiating action to guard the public safety. It is called the Executive Branch.").

b. As the circuit court recognized, the *Code of Virginia* also confers other, non-emergency authority on the Governor sufficient to support the Executive Order. Circuit Court Order 1–2. For example, Code § 2.2-103—which is specifically cited in the Order (EO 1)—grants "authority . . . for the formulation and administration of the policies of the executive branch." Code § 2.2-103(A). In that capacity, the Governor oversees the Department of General Services (DGS). And the Code specifically provides that DGS, "under the direction and control *of the Governor*, shall have control of the Capitol Square"—the very location covered by the challenged Order. See Code § 2.2-1144 (emphasis added). Indeed, it is under this authority that DGS issues permits for groups to

hold rallies in Capitol Square—including the one granted to petitioners for the January 20 rally.[11]

2. Second, the Governor *also* had the power to issue the Executive Order under the Emergency Law. EO 1. That statute provides that the Governor "shall take such action from time to time as is necessary for the adequate promotion and coordination of state local emergency services activities relating to the safety and welfare of the Commonwealth in time of disasters." Code § 44-146.17. The Executive Order does just that.

Petitioners conceded in the hearing before the circuit court that they do not challenge the Governor's declaration of a state of emergency. Accordingly, the only remaining issue is whether Code § 44-146.15(3) renders *unlawful* executive action that would otherwise have been a lawful exercise of authority under Code § 44-146.17.

---

[11] The Governor's authority to issue the Executive Order also draws support from Code § 2.2-103(B), which designates the Governor as "Chief Personnel Officer of the Commonwealth." In that role, the Governor is charged with ensuring the safety of the many state employees who work in and around Capitol Square. Indeed, the specific section of the Order that petitioners challenge notes that the Governor is temporarily restricting firearms "[t]o provide for the shelter and safety of state employees who work on or near the Virginia State Capitol." EO 2.

It does not. By its terms, subsection (3) supplies a rule of construction: that "[n]othing in this chapter" should be "construed to" authorize the Governor to violate the *constitutional* right "to keep and bear arms." Code § 44-146.15(3); see *id.* (referencing "the rights of the people to keep and bear arms as guaranteed by Article I, Section 13 of the Constitution of Virginia or the Second Amendment of the Constitution of the United States"). And, as we have already explained, the Executive Order does not violate anyone's constitutional rights. See Part I(A)(1), *supra*.

Petitioners insist that Code § 44-146.15(3) sweeps far further and that it was "enacted . . . specifically to prevent and prohibit the Governor from *in any way* limiting or prohibiting the possession or carrying of firearms pursuant to a declaration of a state of emergency." Pet. 6–7 (emphasis added). But that is not what the statute says, and "[t]he question here is not what [petitioners claim] the legislature intended to enact, but what is the meaning of that which it did enact." *Carter v. Nelms*, 204 Va. 338, 346 (1963). As with their other claims about the scope of the Governor's authority, petitioners' claims about the Emergency Law do not warrant reversal.

II. Petitioners cannot demonstrate that the balance of equities or the public interest favors a temporary injunction

Whether petitioners have established a likelihood of success on the merits is only the beginning of the inquiry. "In exercising their sound discretion, courts of equity should pay particular regard for the public consequences in employing the extraordinary remedy of injunction." *Winter*, 555 U.S. at 24 (citation omitted).

Here too, petitioners fall short of their burden. Petitioners insist that the Executive Order "lays out nothing but purely hypothetical and speculative scenarios, and based on vague conjecture" and assert that "there is no credible harm to *Defendants* if an injunction were issued." Pet. 11 (emphasis added). But the relevant harms are not to Governor Northam and Colonel Pike personally—they are to all "who come to participate in the democratic process," "those who work on or near Capitol Square," and the numerous law enforcement officials who will be charged with ensuring order and public safety. EO 1. As the circuit court recognized, "'courts must give deference to the professional judgement' of those tasked with making 'complex, subtle, and professional decisions.'" Circuit Court Order 1 (quoting *Winter*, 555 U.S. at 24). In contrast, petitioners ask this Court—with no evidentiary

record and in a highly expedited proceeding, see note 7, *supra*—to simply disregard the judgment of the Governor and the advice of the seasoned law-enforcement officials on whose recommendations he relied—not to mention the powerful weight of the historical record given the tragic events in Charlottesville. EO 1 (referencing "[c]redible intelligence gathered by Virginia's law enforcement agencies"); accord *Winter*, 555 U.S. at 24 (noting that "neither the Members of this Court nor most federal judges begin the day with briefings that may describe new and serious threats to our Nation and its people" (citation omitted)).[12]

CONCLUSION

The petition for review should be denied.

---

[12] Petitioners' only response to the equities and public interest factors is a single sentence from a news story paraphrasing an unidentified state official. Pet. 12. Even that article, however, identifies a posting on social media "that included a photo of an AR-15 and said there are 'great sight angles from certain buildings' near Capitol Square." Complaint, Exhibit D. And because that article was published the day before the Executive Order issued, it cannot reflect any information received since then.

Respectfully submitted,

HON. RALPH NORTHAM &
COLONEL ANTHONY S. PIKE

By: /s/ Toby J. Heytens

MARK R. HERRING
Attorney General

VICTORIA N. PEARSON
Deputy Attorney General

TOBY J. HEYTENS (#90788)
Solicitor General

MICHELLE S. KALLEN (#93286)
MARTINE E. CICCONI (#94542)
Deputy Solicitors General

JESSICA MERRY SAMUELS (#89537)
Assistant Solicitor General

ZACHARY R. GLUBIAK (#93984)
John Marshall Fellow

Office of the Attorney General
202 North Ninth Street
Richmond, Virginia 23219
(804) 786-7704
(804) 371-0200 (fax)
SolicitorGeneral@oag.state.va.us

January 17, 2020

CERTIFICATE OF COMPLIANCE

I certify that this response contains 4,334 words. I am simultaneously submitting a motion to file response in excess of page/word limit.

I certify that on Friday, January 17, 2020 (a state holiday), I emailed a PDF copy of this response to the Clerk of the Supreme Court of Virginia and to counsel for petitioners at dbrowne@sblawva.com and wjo@mindspring.com.

Finally, I certify that on Tuesday, January 21st (the next business day), I will hand-deliver a copy of this brief to the Court and mail service copies to:

David G. Browne, Esq.
Attorney at Law
Spiro & Browne, PLC
6802 Paragon Place, Suite 410
Richmond, VA 23230

Robert J. Olson
William J. Olson
William J. Olson, P.C.
370 Maple Avenue, West, Suite 4
Vienna, VA 22180

s/ Toby J. Heytens
Toby J. Heytens