

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF BRISTOL

GARY WIDNER,

Plaintiff,

v.

Case No. CL24000668

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

Defendant.

**PLAINTIFF GARY WIDNER'S MOTION FOR AND
MEMORANDUM IN SUPPORT OF SUMMARY JUDGMENT**

COMES NOW Plaintiff Gary Widner, by and through counsel, and moves this Court for summary judgment pursuant to Rule 3:20 of the Rules of the Supreme Court of Virginia, and in support thereof states as follows:

I. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Facts Not Genuinely in Dispute

1. Plaintiff Gary Widner is a citizen of the United States who resides in Bristol, Virginia. Compl. Ex. A, Widner Affidavit ("Aff.") ¶1; *see also* Jan. 29, 2026 Opinion Letter ("Op.") at 2.
2. Widner is a gun owner who is eligible to possess firearms, and he is a firearms instructor. Aff. ¶¶2-3, 6; Op. at 2.
3. Widner is not eligible for any exception to the prohibitions contained in Va. Code § 18.2-283.2. Aff. ¶¶10-11; Op. at 2.
4. Va. Code § 18.2-283.2(B)(iii) (the "Challenged Statute") makes it unlawful to carry a firearm in "any building owned or leased by the Commonwealth or any agency thereof."
5. The Commonwealth of Virginia owns and operates its retail ABC stores through the Virginia Alcoholic Beverage Control Authority. *See* Va. Code § 4.1-119. Each ABC store is a

building owned or leased by the Commonwealth or an agency thereof, and the Challenged Statute therefore prohibits the carrying of firearms therein.

6. Defendant admits that Va. Code § 18.2-283.2 also prohibits firearm carry in Virginia Department of Transportation-owned Safety Rest Areas. Ans. to Compl. ¶ 13.

7. But for the Challenged Statute, Widner would “otherwise be entitled to carry firearms without fear of penalty, at Virgin[i]a ABC stores and Virginia Rest Areas.” Op. at 2; *see also* Aff. ¶¶13-19.

8. The Challenged Statute is the only restriction at the federal, state, or local level that prevents persons otherwise eligible to possess and carry firearms from carrying a firearm within Virginia ABC stores and Safety Rest Areas. Op. at 2 (“except for the prohibition established under Virginia law”).

9. Virginia ABC stores and Safety Rest Areas are open to the general public and impose no security screening, such as metal detectors, bag searches, or keycard-controlled entry, as a condition of entry. *See* Compl. ¶69 n.11; *see also* *Commonwealth v. Goodman*, 116 Va. Cir. 187, 191 (Chesterfield 2025) (“A court may take judicial notice of facts not subject to reasonable dispute that are either (1) common knowledge or (2) capable of accurate determination by resort to sources whose accuracy cannot reasonably be questioned.”).

10. Virginia ABC stores and Safety Rest Areas do not contain within them any legislative assembly, polling place, courthouse, or school. *See* Compl. ¶69 n.11; *see also* *Goodman*, 116 Va. Cir. at 191.

Conclusions of Law

1. Plaintiff Widner “risks criminal prosecution under the Virginia Code for exercising his constitutional right to carry a firearm at either an ABC Store or Rest Area in the Commonwealth.” Op. at 2; *see also* Aff. ¶¶13-19.

2. To determine whether the Challenged Statute violates Article I, Section 13 of the Virginia Constitution, this Court “must follow the approach” articulated in *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1 (2022). *Stickley v. City of Winchester*, 110 Va. Cir. 300, 320 (Winchester 2022); *accord* Order Granting Preliminary Injunction, *Crump v. Katz*, No. CL26000201-00 (Lancaster Cnty. Cir. Ct. June 30, 2026) (applying the U.S. Supreme Court *Bruen* framework to Article I, Section 13 of the Constitution of Virginia to preliminarily enjoin enforcement of Virginia’s recently enacted bans on “assault firearms” and certain ammunition magazines).¹

3. Thus, when the Constitution’s “plain text covers an individual’s conduct, the Constitution presumptively protects that conduct,” and the government “must then justify its regulation by demonstrating that it is consistent with the ... historical tradition of firearm regulation. Only then may a court conclude that the individual’s conduct falls outside [Article I, Section 13’s] ‘unqualified command.’” *Bruen*, 597 U.S. at 24.

4. Plaintiff Widner belongs to “the people” protected by Article I, Section 13; his handgun is a protected arm; and his proposed course of conduct, carrying a handgun in public for self-defense within ABC stores and Safety Rest Areas, falls within the plain text, which on its face draws no locational distinction regarding where one may “bear” a firearm.

5. The Challenged Statute is therefore “presumptively unconstitutional,” *Wolford v. Lopez*, 146 S. Ct. 2032, 2044 (2026), and Defendant bears the burden of “affirmatively prov[ing] that

¹ For avoidance of doubt, Plaintiff seeks relief solely pursuant to Article I, Section 13 of the Virginia Constitution, and not under the Second Amendment. References to the Second Amendment and federal analysis thereof are solely for the purposes of interpreting the corresponding Article I, Section 13 principles.

[the] firearms regulation is part of the historical tradition that delimits the outer bounds of the right to keep and bear arms.” *Bruen*, 597 U.S. at 19.

6. Because Article I, Section 13 was adopted in 1776, and because the Second Amendment establishes a “bare minimum or ‘floor’” of protection pegged to 1791, the relevant period of historical regulation is the Founding era. *Stickley*, 110 Va. Cir. at 317; *Bruen*, 597 U.S. at 37. Reconstruction-era evidence is, at most, “mere[ly] confirmat[ory].” *Bruen*, 597 U.S. at 37. Evidence from 1971 is irrelevant. See also *DiGiacinto v. Rector & Visitors of George Mason Univ.*, 281 Va. 127, 134 (2011) (“We hold that ... Article I, § 13 of the Constitution of Virginia is co-extensive with the rights provided by the Second Amendment of the United States Constitution....”)

7. The Challenged Statute is not consistent with any historical tradition of firearm regulation at the Founding, whether in Virginia or nationally.

8. Nor is the Challenged Statute consistent with the firearm regulations in place at the adoption of the Fourteenth Amendment in 1868.

9. Nor is the Challenged Statute consistent with the firearm regulations in place in 1971, when Article I, Section 13 was last amended.

10. Nor are Virginia ABC stores and Safety Rest Areas “sensitive places” as the U.S. Supreme Court has articulated that term. They are disanalogous to the “legislative assemblies, polling places, and courthouses” that *Bruen* assumed (without expressly deciding) were sensitive at the Founding. *Bruen*, 597 U.S. at 30.

11. ABC stores and Safety Rest Areas are not “civic locations sporadically visited in general, where a bad-intentioned armed person could disrupt key functions of democracy.” *Hardaway v. Nigrelli*, 639 F. Supp. 3d 422, 440 (W.D.N.Y. 2022) (emphasis removed). Nor are ABC stores

and Safety Rest Areas “typically secured locations, where uniform lack of firearms is generally a condition of entry, and where government officials are present and vulnerable to attack.” *Id.* (emphasis removed).

12. Nor are ABC stores or Safety Rest Areas “sensitive” under *DiGiacinto v. Rector & Visitors of George Mason Univ.*, 281 Va. 127 (2011), because they are open to the general public like a public street, not enclosed institutions with restricted access.

13. Because there is no historical tradition supporting a ban on firearms in places like ABC stores and Safety Rest Areas, the Challenged Statute violates Article I, Section 13 as applied to those locations.

II. ARGUMENT

A. Because This Case Presents a Pure Question of Law, Summary Judgment Is the Appropriate Vehicle for Resolution.

Virginia Supreme Court Rule 3:20 provides that “[a]ny party may make a motion for summary judgment at any time after the parties are at issue,” and directs that the court “shall enter judgment in that party’s favor” when “it appears from the pleadings, the orders, if any, made at a pretrial conference, [and] the admissions, if any, in the proceedings ... that the moving party is entitled to judgment.” However, summary judgment “shall not be entered if any material fact is genuinely in dispute.” *Id.* The rule permits a trial court “to end litigation at an early stage” whenever “it clearly appears that one of the parties is entitled to a judgment in the case as made out by the pleadings and the parties’ admissions.” *Renner v. Stafford*, 245 Va. 351, 353 (1993).

Consistent with that limitation, Plaintiff’s Motion rests only on the permitted Rule 3:20 record, namely the parties’ pleadings, Plaintiff’s affidavit accompanying the Complaint, the Commonwealth’s admissions, and this Court’s prior findings, and it relies on no further affidavit or discovery deposition. The material facts are not in genuine dispute. In denying Defendant’s

motion to dismiss and overruling the demurrer, this Court already found that Widner is a Bristol resident, a firearm-eligible gun owner and firearms instructor, ineligible for any statutory exception, and subject to criminal prosecution for carrying at an ABC store or Safety Rest Area. Op. at 2. This Court further held that Widner “clearly has standing.” *Id.* Defendant’s admission that the statute bars carry in VDOT Safety Rest Areas, Ans. ¶13, together with the statutory text reaching Commonwealth-owned buildings, completes the undisputed factual picture necessary to grant summary judgment.

What remains “is a legal ruling or decision dependent upon applying the law to the facts of the case.” *Payne v. City of Charlottesville*, 102 Va. Cir. 439, 439 (Charlottesville 2019). The constitutionality of a firearm regulation presents a pure question of law. As one court explained, “[t]he existence, or lack thereof, of a particular historical practice is of course in some sense factual,” but its resolution “turns on a distinct legal question to which certain historical facts are merely relevant.” *United States v. Ayala*, 711 F. Supp. 3d 1333, 1352 (M.D. Fla. 2024), *appeal dismissed*, No. 24-10462 (11th Cir. Aug. 22, 2025). No evidentiary hearing is required, and no factual findings remain to be made. The issue is ripe for summary judgment.

B. The Challenged Statute Violates Article I, Section 13

Article I, Section 13 provides “[t]hat 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.” Va. Const. art. I, § 13. Because that right is at least “co-extensive with” the Second Amendment, this Court “must follow the approach” set out in *Bruen. Stickley*, 110 Va. Cir. at 314, 320; *see also DiGiacinto*, 281 Va. at 134 (explaining that “provisions of the Constitution of Virginia that are substantively similar to those in the United

States Constitution will be afforded the same meaning,” and “Article I, § 13 of the Constitution of Virginia is co-extensive with the rights provided by the Second Amendment”).

1. *Bruen*’s Approach and the Controlling Founding-Era Time Period.

Under *Bruen*, when the “plain text covers an individual’s conduct, the Constitution presumptively protects that conduct,” and “the government must demonstrate that the regulation is consistent with th[e] ... historical tradition of firearm regulation. Only if a firearm regulation is consistent with this ... historical tradition may a court conclude that the individual’s conduct falls outside [Article I, Section 13’s] ‘unqualified command.’” *Bruen*, 597 U.S. at 17.

Here, Widner’s proposed course of conduct easily falls within Article I, Section 13’s plain text. First, Widner undoubtedly belongs to “the people.” See *District of Columbia v. Heller*, 554 U.S. 570, 580, 581 (2008) (reaching “all members of the political community” and “all Americans”); *Bruen*, 597 U.S. at 31 (“undisputed that ... ordinary, law-abiding, adult citizens[] are part of ‘the people’”). Widner is a law-abiding adult who is “eligible to possess firearms” and “lawfully entitled to carry firearms,” and indeed serves as a firearms instructor. Op. at 2. What is more, by holding a Virginia Concealed Handgun Permit, Widner has been determined “[un]likely to use a weapon unlawfully or negligently to endanger others.” Va. Code § 18.2-308.09(13). Second, Widner’s handgun indisputably is an “arm.” *Heller*, 554 U.S. at 581 (“all firearms”); *Bruen*, 597 U.S. at 32 (“handguns are weapons ‘in common use’”); *Wolford*, 146 S. Ct. at 2041 (“implements used for offense or defense”). And third, Widner’s proposed conduct – carrying a handgun for self-defense in publicly accessible ABC stores and Safety Rest Areas – is quintessential “arms-bearing conduct.” *United States v. Rahimi*, 602 U.S. 680, 691 (2024); *Bruen*, 597 U.S. at 32 (“carrying handguns publicly for self-defense”); *Wolford*, 146 S. Ct. at 2041 (covering even private properties open to the public). Indeed, Article I, Section 13’s text “contains

no locational limitation” confining the right to any place. *Stickley*, 110 Va. Cir. at 321. The Challenged Statute is therefore “presumptively unconstitutional,” *Wolford*, 146 S. Ct. at 2044, and the Commonwealth “must affirmatively prove” a historical tradition justifying it. *Bruen*, 597 U.S. at 19. To be clear, it is the Commonwealth’s burden under *Bruen* to prove the existence of a relevant historical tradition from the Founding Era – not the Plaintiff’s burden to prove any lack thereof.

Thus, the Second Amendment’s original, Founding-era meaning sets the “floor” of protection below which Article I, Section 13 cannot sink. *Stickley*, 110 Va. Cir. at 317. And with respect to Article I, Section 13 itself, the proper historical time period for review is 1776, when the provision was first adopted – not 1971, when the provision was last amended. As another Virginia circuit court persuasively explained, “analysis of historical tradition from the perspective of the adopters in 1971” “fails,” because “*Bruen* establishes the ... relevant times in ... history to consider....” *Id.* at 321-22.

And as *Bruen* explained, “we have generally assumed that the scope of the protection applicable to the Federal Government and States is pegged to the public understanding of the right when the Bill of Rights was adopted in 1791.” *Bruen*, 597 U.S. at 37; *see also Rahimi*, 602 U.S. at 692 (“‘apply[ing] faithfully the balance struck by the founding generation to modern circumstances’”). Since then, courts have followed *Bruen* and held the Founding era to be the proper historical time period in Second and Fourteenth Amendment challenges to state action. *See, e.g., Worth v. Jacobson*, 108 F.4th 677, 692-93 (8th Cir. 2024); *Lara v. Comm’r Pa. State Police*, 125 F.4th 428, 441 (3d Cir. 2025); *NRA v. Bondi*, 133 F.4th 1108, 1115 (11th Cir. 2025). The Supreme Court’s most recent Second Amendment decisions have only continued this Founding-era focus. *See United States v. Hemani*, 146 S. Ct. 1677, 1687 (2026) (analyzing “the time of the

founding and ... decades following it”); *Wolford*, 146 S. Ct. at 2050 (analyzing “colonial and early state laws”). Thus, 19th-century evidence, such as that from around the Reconstruction era, is at most “treated as mere confirmation of what the Court thought had already been established.” *Bruen*, 597 U.S. at 37.

Even so, the Challenged Statute has no established historical analogue in any historical time period. Whether measured against the public understanding of Article I, Section 13 in 1776, the Second Amendment’s 1791 floor, the Reconstruction era in 1868, or even 1971, there is no relevantly similar tradition of disarming peaceable citizens in wholly nonsensitive places like ABC stores and Safety Rest Areas. Indeed, the Challenged Statute was first enacted *in 2021*. See Compl. ¶65. It is a thoroughly modern invention that is incompatible with the pre-existing right that Article I, Section 13 codified.

2. There Is No Historical Tradition of Banning Firearms in Places Like ABC Stores and Safety Rest Areas.

In *Bruen*, the Court discussed the dearth of “18th- and 19th-century ‘sensitive places’ where weapons were altogether prohibited” in public. 597 U.S. at 30. Identifying some restrictions only in the “legislative assemblies, polling places, and courthouses” of that era,² the Court “assume[d]” that “arms carrying could be prohibited” in those places and instructed courts to “use analogies to those historical regulations” to assess modern locational bans. *Id.* Importantly, the Court warned against “expanding the category of ‘sensitive places’ simply to all places of public congregation that are not isolated from law enforcement.” *Id.* at 31.

² Previously in *Heller*, the Court assumed schools were historically “sensitive places,” too (554 U.S. at 626) – a claim the Court later appeared to walk back in *Bruen*, which acknowledged historical instances of *teachers* being encouraged to carry firearms during Reconstruction. See 597 U.S. at 61.

First, the Commonwealth cannot carry its burden by pointing to historical laws that broadly restricted the public carrying of arms, because such laws are not locational analogues at all. A general prohibition on public carry burdens the right by eliminating the ability to bear arms in public altogether. A locational restriction does the opposite: it presumes a general right to public carry and then limits that right only in discrete places. The distinction is intuitive. A law forbidding all protesting is a general ban, while a law forbidding protesting on the White House lawn is a locational restriction; both regulate the same activity, but they burden it in fundamentally different ways. A 19th-century statute that broadly forbade carrying arms therefore cannot be repackaged as evidence of a narrower tradition of banning arms in certain limited “sensitive places.” See *Bruen*, 597 U.S. at 29 (the analogical inquiry turns on “how and why” a regulation burdens the right); *Rahimi*, 602 U.S. at 692 (“Why and how the regulation burdens the right are central to this inquiry.”).

The distinction matters because the presumptive “sensitive places” *Bruen* discussed were all narrow in scope, covering only enclosed places of governmental decision-making. See David B. Kopel & Joseph G.S. Greenlee, *The “Sensitive Places” Doctrine*, 13 *Charleston L. Rev.* 205 (2018). Yet ABC stores and Safety Rest Areas host no legislature, no court, and no governmental proceeding of any kind. The Challenged Statute therefore fails both *Bruen*’s “how” and “why” – it burdens far more public carry than the historical regulations did, and it does not do so to ostensibly protect core governmental deliberation. Founding-era practice confirms how narrow *Bruen*’s assumed tradition was: colonial Georgia required militia-eligible men to bring “a gun, or a pair of pistols” to church – the opposite of treating places of public assembly as gun-free zones. See *An Act for the Better Security of the Inhabitants* (Ga. 1770). The same was true in colonial Virginia. See 1632 Va. Acts 198, 198.

Second, Bruen’s Founding-era “sensitive places” share features that ABC stores and Safety Rest Areas lack entirely. Legislative assemblies, polling places, and courthouses are “civic locations sporadically visited in general, where a bad-intentioned armed person could disrupt key functions of democracy,” and are “typically secured locations, where uniform lack of firearms is generally a condition of entry, and where government officials are present and vulnerable to attack.” *Hardaway*, 639 F. Supp. 3d at 440 (emphases removed). ABC stores and Safety Rest Areas have none of these features. They are open to the public and frequently visited by ordinary Virginians; they house no key function of democracy; and they are not secured, having no guard, metal detector, or locked door that would make a uniform lack of firearms a condition of entry. They cannot be deemed “sensitive” by mere legislative fiat simply because the Commonwealth owns or leases them, any more than can a public street.

Third, Virginia appellate case law confirms the point. In *DiGiacinto*, the Supreme Court of Virginia upheld a firearm ban on a university campus precisely because a university, “unlike a public street or park, ... traditionally has not been open to the general public.” 281 Va. at 136. ABC stores and Safety Rest Areas are “open to the general public” like a “public street,” not enclosed “institute[s] of higher learning.” *Id.* Under *DiGiacinto*’s own reasoning, ABC stores and Safety Rest Areas are nonsensitive.

Fourth, the Founding-era Virginia record contains no locational ban resembling the Challenged Statute. The one Founding-era Virginia enactment with *any* locational component restricted only conduct that was already criminal:

No man, great nor small, of what condition soever he be, except the Ministers of Justice in executing the precepts of the Courts of Justice, or in executing of their office, and such as be in their company assisting them, be so hardy to come before the Justices of any Court, or other of their Ministers of Justice, doing their office, with force and arms, on pain, to forfeit their armour to the Commonwealth, and their bodies to prison, at the pleasure of a Court; nor go nor ride armed by night nor

by day, in fairs or markets, or in other places, in terror of the Country.... [An Act Forbidding and Punishing Affrays (Nov. 27, 1786), in *A Collection of All Such Acts of the General Assembly of Virginia*, ch. XXI, at 33 (1794).]

That statute descended from the 1328 Statute of Northampton under which, as *Bruen* explained, “the mere public carrying of a handgun” in “fairs or markets, or in other places” did not incur liability; one had to separately “terrify the People.” *Bruen*, 597 U.S. at 45. If anything, this historical regulation was a forebear of the Commonwealth’s modern brandishing statute, *see* Va. Code § 18.2-282, not any modern “sensitive place” law, and it provides no analogue for disarming peaceable shoppers and travelers.

Fifth, as to ABC stores in particular, the Commonwealth may be tempted to justify disarmament by analogy to a supposed tradition of separating firearms from alcohol. But no such tradition supports the Challenged Statute. The Founding generation did not disarm citizens because of the mere presence or sale of liquor, and the historical record reflects no law barring the peaceable carry of arms in places where alcohol was sold or consumed. The regulations that *did* address arms and public intoxication were militia-discipline rules directed at military service, not civilian carry. Indeed, as the Fifth Circuit has explained, such laws “applied only to militia members” when called for duty and “none of them spoke to a militia member’s ability to carry outside of military service.” *United States v. Connelly*, 117 F.4th 269, 281 (5th Cir. 2024). And as the Supreme Court recently made clear in *United States v. Hemani*, not even a regular unlawful user of a controlled substance can be disarmed without individualized proof that such use “render[s] him a danger to others.” 146 S. Ct. at 1693. It follows that there is no historical justification for banning a sober patron’s possession of a firearm while in an ABC store, like Plaintiff Widner.

Sixth, the Commonwealth cannot claim ABC stores and Safety Rest Areas' sensitivity by asserting responsibility for safety within these locations, because it has assumed no such responsibility. To the contrary, "the owner or possessor of land is under no duty to protect invitees from assaults by third parties while the invitee is upon the premises." *Wright v. Webb*, 234 Va. 527, 530 (1987); *see also Burdette v. Marks*, 244 Va. 309, 312-13 (1992). The Commonwealth does not screen entrants, station guards, or otherwise secure ABC stores or Safety Rest Areas, and it owes no duty to protect patrons of the same. The Commonwealth certainly will not be on the hook if disarmed visitors are harmed by criminals who – by definition – will ignore the Challenged Statute³.

Seventh and finally, nor may the Commonwealth exempt government-owned or -run places from Article I, Section 13's protections, merely by invoking its status as owner or proprietor. To accept that theory would let the government "bypass parts of the Constitution it deems unfavorable." *Firearms Pol'y Coal., Inc. v. Bondi*, 805 F. Supp. 3d 721, 731 (N.D. Tex. 2025). If governmental ownership sufficed, the Commonwealth could search the vehicles of every driver entering a rest area, or forbid religious dress in an ABC store, free of constitutional constraint. But it cannot. Even as a proprietor, the Commonwealth "must point to a historical tradition justifying any claimed power to regulate conduct protected by the Second Amendment's plain text." *Ayala*, 711 F. Supp. 3d at 1353.

3. *United States v. Ayala and Firearms Policy Coalition v. Bondi* Persuasively Apply *Bruen* to Government-Owned Property.

³ Indeed since § 18.2-283.2 took effect in July 2021, multiple examples of bad actors ignoring the law and victimizing unarmed individuals exist. *See, e.g. A shooting at a roadside rest stop* <https://wjla.com/news/local/interstate-81-shooting-frederick-virginia-state-police-vsp> and a recent armed robbery in an ABC store <https://rocktownnow.com/news/218812-rcso-makes-arrest-in-armed-robbery-at-virginia-abc-store/>

Two recent federal decisions applying *Bruen* to firearm bans on government property confirm that the Challenged Statute is unconstitutional. In *Ayala*, one district court dismissed an as-applied challenge to a criminal charge for peaceably possessing a firearm in a federal post office. 711 F. Supp. 3d at 1342. *Ayala* establishes two points. First, government ownership is not dispositive of a place's supposed sensitivity; there, the court found "no support" in the Supreme Court's cases for a government-as-proprietor exception. *Id.* at 1353. Second, the Supreme Court has not held that all government buildings are categorically "sensitive"; reading its dicta that way "would put *Bruen*'s dicta in direct contradiction with *Bruen*'s holding," and "would render the analogical reasoning required by *Bruen* pointless." *Id.* at 1351-52. Thus, because no holding or reasoned dictum answers the question, "*Bruen* requires the above historical analysis." *Id.* at 1352; accord *Wolford*, 146 S. Ct. at 2043 (requiring historical analysis when a "law place[s] any restrictions on ... the 'bear[ing]' (*i.e.*, carrying) of arms"). *Bondi* reached the same conclusion as *Ayala*, also as to post offices, rejecting the government's ownership-proprietor theory as a "Hail Mary." *Bondi*, 805 F. Supp. 3d at 731.

If a federal post office is nonsensitive under *Bruen*, then a roadside restroom or a retail liquor store is *a fortiori* nonsensitive. Post offices, unlike ABC stores and Safety Rest Areas, at least perform a recognized governmental function. Rest areas and ABC stores do not, and they cannot be characterized as sensitive merely because the Commonwealth owns and/or operates them.

4. Federal Decisions Upholding Government-Building Bans Are Neither Binding nor Persuasive.

Any reliance by the Commonwealth on *Kipke v. Moore*, 2026 U.S. App. LEXIS 1350 (4th Cir. Jan. 20, 2026), will be misplaced. As a threshold matter, this Court is not bound by the Fourth Circuit; its decisions "are not binding precedent" and are "at most, persuasive authority." *Toghill*

v. Commonwealth, 289 Va. 220, 227 (2015).⁴ That is doubly true where the question is the meaning of Virginia’s own Constitution. Nor is *Kipke* even persuasive. The panel conducted no historical analysis of “government buildings” at all, resting on Supreme Court dicta and ending its analysis in a single paragraph. 2026 U.S. App. LEXIS 1350 at *15-16. It embraced the same proprietary-function theory that *Ayala* and *Bondi* rejected, and it relied on the wrong historical time period. A decision that skips the analysis *Bruen* requires cannot justify disarming Virginians where the Founding-era record is silent.

II. CONCLUSION

Because there is no Founding-era tradition, in Virginia or nationally, of disarming law-abiding citizens in places like ABC stores and highway rest areas, the Commonwealth cannot carry its burden under *Bruen*. Plaintiff Gary Widner respectfully requests that this Court grant summary judgment in his favor; declare that Va. Code § 18.2-283.2(B)(iii) violates Article I, Section 13 of the Virginia Constitution as applied to Virginia ABC stores and Virginia Safety Rest Areas; and permanently enjoin Defendant, and his successors, officers, agents, and employees from enforcing the Challenged Statute in those locations.

Respectfully submitted,

GARY WIDNER

By: 

⁴ Indeed, in *Crump v. Katz*, No. CL26000201-00, the Lancaster County Circuit Court recently held that Virginia’s novel bans on “assault firearms” and certain ammunition magazines likely violated Article I, Section 13, even though the Fourth Circuit had upheld an “assault weapons” ban under the Second Amendment in *Bianchi v. Brown*, 111 F.4th 438 (4th Cir. 2024). See also *Santolla v. Katz*, No. CL26-1139 similarly finding a likely constitutional violation under Article 1, Section 13 for an “assault weapon” ban despite a contrary Fourth Circuit finding.

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CERTIFICATE OF SERVICE

I hereby certify that, on this __21__ day of August, 2026, a true and accurate copy of the foregoing was served upon the following counsel of record:

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