

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF LANCASTER

JOHN CRUMP, et al.,

Plaintiffs,

v.

Case No. CL26001201-00

COLONEL JEFFREY S. KATZ, in his official
capacity as Superintendent of the Virginia
State Police,

Defendant.

_____ /

MOTION TO DISMISS AND DEMURRER

Pursuant to Code § 8.01-273 and Rule 3:8(a) of the Rules of the Supreme Court of Virginia, Defendant, Jeffrey S. Katz, in his official capacity as Superintendent of the Virginia State Police, submits this Motion to Dismiss and Demurrer to Plaintiffs' Complaint.

Reserving the right to submit briefing consistent with Rule 4:15 of the Rules of the Supreme Court of Virginia and any applicable Orders, Defendant states the following in support hereof:

MOTION TO DISMISS

1. Rule 3:8 of the Rules of Supreme Court of Virginia provides for motions to dismiss as one of the permitted types of initial responsive pleadings.

2. "There is no Supreme Court of Virginia Rule, however, comparable to Federal Rule 12; that is, there is no rule which sets forth all the grounds for which a motion to dismiss may be brought." *Atl. Tr. Servs., L.L.C. v. Cortez*, 98 Va. Cir. 182 (2018), *aff'd sub nom. Futuri Real Est., Inc. v. Atl. Tr. Servs., LLC*, 298 Va. 147 (2019) (discussing various bases for motions to dismiss including jurisdictional questions).

3. The Court “can review evidence submitted on a motion to dismiss. It is only when ‘no evidence [has been] taken with regard to [a] motion to dismiss’ that a court reviews a complaint’s factual allegations as it does on demurrer.” *Clyde v. Fairfax Cnty. Bd. of Supervisors*, 108 Va. Cir. 416, 419 (Fairfax Cnty. Cir. Ct. 2021) (alterations in original) (quoting *Bragg v. Rappahannock Cnty. Bd. of Supervisors*, 295 Va. 416, 423 (2018)).

The Organizational Plaintiffs Lack Standing

4. Plaintiffs Gun Owners of America, Inc., Gun Owners Foundation, Virginia Citizens Defense League, and Virginia Citizens Defense Foundation (“Organizational Plaintiffs”) lack standing to bring this action on behalf of third parties, and none of the Plaintiffs has standing to bring this action against Defendant Jeffrey S. Katz.

5. Standing is a “preliminary jurisdictional issue,” such that an “action filed by a party who lacks standing is a legal nullity.” *McClary v. Jenkins*, 299 Va. 216, 221 (2020) (quoting *Andrews v. Am. Health & Life Ins.*, 236 Va. 221, 226 (1988)), and *Kocher v. Campbell*, 282 Va. 113, 119 (2011))).

6. Standing requires an “actual controversy” between litigants and “protects a court from issuing an ‘advisory opinion.’” *Morgan v. Bd. of Supervisors of Hanover Cnty.*, 302 Va. 46, 67 (2023) (quoting *Carney v. Adams*, 141 S. Ct. 493, 498 (2020)). Thus, standing has a “constitutional dimension” that “protects ‘separation-of-powers principles’ and ‘prevent[s] the judicial process from being used to usurp the powers of the political branches.’” *Layla H. v. Commonwealth*, 81 Va. App. 116, 133 (2024) (alteration in original) (quoting *Morgan*, 302 Va. at 58).

7. To satisfy the standing requirement, the plaintiff must “demonstrate (1) a direct interest in the outcome of the controversy, (2) that the plaintiff’s injury was caused by the

defendant's actions, and (3) that judicial resolution is available for the injury." *Perkins v. Commonwealth*, 84 Va. App. 519, 526-27 (2025).

8. "An . . . entity does not acquire standing to sue in a representative capacity by asserting the rights of another, unless authorized by statute to do so." *Casey v. Merck & Co.*, 283 Va. 411, 418 (2012); *W.S. Carnes, Inc. v. Chesterfield Cnty. Bd. of Supervisors*, 252 Va. 377, 383 (1996). No such statute authorizes Organizational Plaintiffs to sue in a representative capacity.

9. Organizational Plaintiffs thus lack standing to the extent they purport to bring this action on behalf of third parties.

All Plaintiffs Lack Standing

10. All Plaintiffs additionally fail to allege standing to assert their claims against Defendant-Katz because Plaintiffs' requested relief does not redress the harms they allege.

11. To satisfy standing, Plaintiffs must show that "a court may reasonably be expected to find a remedy," and that remedy, even if not a total solution, must be "enough to be able to address the harms of the named defendants." *Layla H. v. Commonwealth*, 81 Va. App. 116, 123 (Va. App. 2024) (quoting *Philip Morris USA, Inc. v. Chesapeake Bay Found., Inc.*, 273 Va. 564, 579 (2007)).

12. Here, Plaintiffs sue the Superintendent of State Police in his official capacity.

13. The Virginia 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).

14. But the laws at issue here are also enforced by Commonwealth's Attorneys who are independent, elected constitutional officers, and local police, including, but not limited to,

Sheriffs, who are also independent, elected constitutional officers, over whom Defendant Katz has no authority. *See* Va. Code § 15.2-1609; Va. Const. art. VII, § 4.

15. Regardless of Plaintiffs requested relief against Defendant Katz, officials exercising authority independent of Defendant Katz may preclude Plaintiffs from engaging in the proscribed conduct.

16. Thus, Plaintiffs fail to show that this named Defendant has caused, or prospectively will cause, the alleged injuries to them or that their requested relief will redress it.

17. Additionally, Plaintiffs' Complaint demands that the Court issue a permanent injunction enjoining not only named Defendant-Katz from enforcing the challenged regulations, but also "all law enforcement divisions, agencies and officers with notice of such injunction." Compl., Prayer for Relief.

18. That relief is precluded because those individuals/entities are not parties to this action. And even if they were parties to this action, Plaintiffs do not plead a credible threat of enforcement in particular to each Plaintiff as to each unnamed party.

19. Plaintiffs fail to plead, and cannot demonstrate, a credible threat of enforcement as to each Plaintiff individually, by Defendant Katz.

20. Accordingly, Plaintiffs lack standing.

21. Plaintiffs further claim a violation of Article I, § 11 of the Virginia Constitution; however, that provision is not self-executing. To the extent *Ibanez v. Albemarle Cnty. Sch. Bd.*, 80 Va. App. 169 (2024), and *Layla H.*, 81 Va. App. 116, held otherwise, those holdings were respectfully wrongly decided.

Plaintiffs' claims also fail on the merits

Plaintiffs' facial challenge should be dismissed

22. “A facial challenge to a legislative Act is, of course, the most difficult challenge to mount successfully, since the challengers 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).

23. Plaintiffs do not target only particular weapons or features; they argue that the entire assault firearms definition is unconstitutional. *See* Compl. ¶ 1.

24. Plaintiffs’ “facial” challenge to SB749 fails because they cannot show that the statute is unconstitutional in *all* its applications. *See, e.g.,* Va. Code § 18.2-308.2:2(F)(2)(iv) (reaching firearms equipped with a grenade launcher).

Va. Const. Art I, § 13 is not controlled by Federal Second Amendment doctrine

25. Plaintiffs’ Complaint invokes only the Constitution of Virginia, Article I, § 13. *See* Compl. *passim*.

26. Contrary to Plaintiffs’ assertions, federal Second Amendment doctrine does not control the meaning of § 13 in this case.

27. Marked textual differences between § 13 of the Constitution of Virginia and the Second Amendment of the United States Constitution mean interpretations of the latter inform, but do not necessarily govern, the construction of the former. *See, e.g., Vlaming v. West Point School Board*, 302 Va. 504, 530 (2023).

28. Given the history of § 13, federal law cannot displace the provision’s text, structure, and ratification history.

29. Va. Const. Art I, § 13’s text and history establish a collective, militia-tethered right: a guarantee of a collective right tied to militia service; not a freestanding guarantee.

30. Plaintiffs cannot show that SB749 falls under the “plain text” of Section 13’s collective right.

31. Even if Plaintiffs can demonstrate that § 13 reaches assault firearms and large-capacity magazines, the Commonwealth has a substantial public safety interest in regulating those weapons, while the challenged regulations impose only a modest burden on the asserted right.

Plaintiffs’ claims fail as matter of law under either doctrine

32. Even if the Court adopts Plaintiffs’ mistaken theory that there is an individual right in § 13, Plaintiffs cannot demonstrate that assault firearms and large capacity magazines are “arms” protected by §13 or the Second Amendment.

33. Assault firearms and large-capacity magazines are not in common use today for lawful self-defense. Because assault weapons are “weapons that are most useful in military service,” they lie “outside the ambit of the Second Amendment.” *See, e.g., Kolbe v. Hogan*, 849 F.3d 114, 136 (4th Cir. 2017); *D.C. v. Heller*, 554 U.S. 570, 625–27 (2008); *see also Bianchi v. Brown*, 111 F.4th 438 (4th Cir. 2024) (en banc).

34. Assault firearms and large-capacity magazines fall outside constitutional protection for a second, independent reason: they are “dangerous and unusual” weapons that the Supreme Court has placed beyond the reach of any arms guarantee. *Heller*, 554 U.S. at 623, 626.

35. Under federal Second Amendment doctrine, even if § 13 reached assault firearms and large-capacity magazines, the challenged regulations are consistent with Virginia’s and the Nation’s tradition of regulating dangerous weapons.

36. Virginia and the Nation have a long tradition of regulating dangerous weapons and the challenged regulations are relevantly similar to those historical regulations.

37. SB749 is justified because it addresses the dramatic technological change of rapid-fire semi-automatic assault firearms and large-capacity magazines and the unprecedented societal concern of mass shootings. The Commonwealth's public-safety interest is substantial, and SB749 is reasonably adapted to that interest. Any burden on Plaintiffs' rights is modest and does not outweigh the Commonwealth's interest.

DEMURRER

1. All of the foregoing paragraphs are incorporated herein by reference in support of the Demurrer.

2. The Court should sustain the Demurrer to the Complaint because the Complaint fails to allege standing, does not state a cause of action and fails to state facts upon which the relief demanded can be granted.

3. A demurrer tests a complaint's legal sufficiency, *Terry v. Irish Fleet, Inc.*, 296 Va. 129, 135 (2018), and will be sustained if the complaint "does not state a cause of action" or "fails to state facts upon which the relief demanded can be granted," Va. Code § 8.01-273(A).

4. Plaintiffs' constitutional challenge to House Bill 217 and Senate Bill 749 fails because those statutes do not violate "the right of the people to keep and bear arms" under Article I, § 13 of the Virginia Constitution.

5. Plaintiffs fail to meet their burden to plead facts demonstrating that Article I, § 13 applies to the assault firearms and large capacity ammunition feeding devices subject to the challenged statutes.

6. Moreover, the challenged statutes' restrictions on assault firearms and large capacity ammunition feeding devices are relevantly similar to Virginia's and the Nation's history and tradition of regulations affecting firearms as a matter of law.

7. The challenged statutes are constitutional, both facially and as applied to the Plaintiffs.

8. Plaintiffs' Due Process claim fails because the challenged laws are not vague as a matter of law.

WHEREFORE, Defendant respectfully requests that the Court sustain his Motion to Dismiss and Demurrer to the Plaintiffs' Complaint and award such other relief as may be just and proper.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of July, 2026, I caused a copy of the foregoing to be placed in the U.S. Mail for mailing, with courtesy copies sent by electronic mail, to:

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