

**IN THE SUPREME COURT OF VIRGINIA**

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

Petitioner/Defendant,     )

v.     )

Record No.: 26-\_\_\_\_\_

JOHN CRUMP, GUN OWNERS OF     )  
AMERICA, INC., GUN OWNERS     )  
FOUNDATION, and VIRGINIA     )  
CITIZENS DEFENSE LEAGUE,     )

Respondents/Plaintiffs.     )

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**RESPONDENTS' OPPOSITION TO PETITIONER'S EMERGENCY  
MOTION TO STAY CIRCUIT COURT ORDER PENDING REVIEW**

## INTRODUCTION

News of the events at Lexington and Concord had not made its way to Virginia when, in the predawn hours of April 20, 1775, a small force of Royal Marines was dispatched by Lord Dunmore, the British Governor of colonial Virginia, to quietly empty the Williamsburg arsenal of its gunpowder. In the days that followed, the colonists demanded its return with increasing agitation. By the time Lord Dunmore threatened to “reduce Williamsburg to ashes,” the “patriot militias were already forming.”<sup>1</sup> In the coming days, “[m]ilitia were moving from almost every corner of Virginia,” and “Captain [Patrick] Henry was elected to command the [Hanover County] militia,” the news of which “spread like wildfire.”<sup>2</sup> On June 8, 1775, as tensions continued to escalate, Lord Dunmore fled the royal palace in terror, and spent the rest of the war hiding on a warship safely anchored in the harbor – effectively ending British rule in Virginia without a single shot being fired.<sup>3</sup>

It is thus no surprise that the Department of Justice recently wrote that, “[f]rom before the beginning of this Nation’s existence, Virginians have provided indispensable leadership in the cause of constitutional liberty.”<sup>4</sup> Indeed, just over

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<sup>1</sup> David Lee Russell, The American Revolution in the Southern Colonies 53 (2000).

<sup>2</sup> *Id.*

<sup>3</sup> See *Dunmore’s Flight and the Seizure of the Governor’s Palace*, Colonial Williamsburg (Apr. 18, 2024), <https://tinyurl.com/4yhn33z3>.

<sup>4</sup> Complaint for Declaratory and Injunctive Relief ¶1, *United States v. Virginia*, No. 3:26-cv-00610 (E.D. Va. July 1, 2026), ECF No. 1.

250 years ago, Virginia's Richard Henry Lee introduced the "Lee Resolution" to the Continental Congress. This led to Virginian Thomas Jefferson being enlisted to draft the Declaration of Independence, which initiated the American experiment. Other members of the "Virginia dynasty"<sup>5</sup> played critical roles. Virginian George Washington presided over the Constitutional Convention in 1787, where an outsized seven out of fifty-five delegates hailed from Virginia.<sup>6</sup> There, Virginian James Madison's painstaking work earned him the title of "Father of the Constitution,"<sup>7</sup> and his "Virginia Plan"<sup>8</sup> – presented to the Convention by Virginian Edmund Randolph – established the federal tripartite structure of government.

Even those Virginians opposed to ratification of the U.S. Constitution were influential. In 1776, Virginian Anti-Federalist George Mason authored this Commonwealth's Declaration of Rights and proposed the motto on its Seal: *sic semper tyrannis* – "thus always to tyrants."<sup>9</sup> And Virginian Patrick Henry, the famed orator and "Voice of the Revolution," leveraged his influence to ensure the inclusion

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<sup>5</sup> Four out of the first five Presidents were Virginians.

<sup>6</sup> See *Virginia Delegates to the Constitutional Convention of 1787*, Encyclopedia Virginia, <https://tinyurl.com/ddant6v5> (last visited July 5, 2026).

<sup>7</sup> *The Father of the Constitution*, Britannica (June 24, 2026), <https://tinyurl.com/s6yx6442>.

<sup>8</sup> *Virginia Plan (1787)*, National Archives (May 10, 2022), <https://tinyurl.com/39mszzwz>.

<sup>9</sup> *Sic Semper Tyrannis*, Reference.org, <https://tinyurl.com/2s4k22z3> (last visited July 5, 2026).

of a nationwide Bill of Rights.<sup>10</sup>

These early Virginians' views on firearm ownership should come as no surprise. Patrick Henry declared "the great object is[] that every man be armed."<sup>11</sup> James Madison explained that the uniquely American "advantage of being armed" is that "a militia thus circumstanced could [n]ever be conquered by ... regular troops."<sup>12</sup> Thus, George Mason observed that "disarm[ing] the people ... was the best and most effectual way to enslave them."<sup>13</sup> These early Virginians understood that individual ownership of arms *deterred* the sorts of atrocities that Lord Dunmore had planned for them in 1775. And so they codified Article I, Section 13 of the Virginia Constitution to guarantee "a well regulated militia, composed of the body of the people, trained to arms, [a]s the proper, natural, and safe defense of a free state." Generations later, Virginians overwhelmingly reaffirmed that this meant that the "right of the people to keep and bear arms shall not be infringed."

Unfortunately, Virginia's newly elected Governor and General Assembly reject these Founding principles. Following the lead of Lord Dunmore instead, they have sought to outlaw the acquisition, disposition, and public carry of hundreds of

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<sup>10</sup> Patrick Henry, Bill of Rights Institute, <https://tinyurl.com/mvkr99nz> (last visited July 5, 2026).

<sup>11</sup> Jonathan Elliot, Debates in the Several State Conventions on the Adoption of the Federal Constitution 386 (1836).

<sup>12</sup> The Federalist No. 46, at 296 (James Madison) (Clinton Rossiter ed., 1961).

<sup>13</sup> Elliot, *supra*, at 380.

millions of the most commonly owned firearms and ammunition magazines in the country. These weapons “are both widely legal and bought by many ordinary consumers,” and they include the ubiquitous semi-automatic AR-15, “the most popular rifle in the country.” *Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, 605 U.S. 280, 297 (2025) (unanimous opinion). That makes the Commonwealth’s ban on “the most popular weapon[s] chosen by Americans” simply “invalid.” *District of Columbia v. Heller*, 554 U.S. 570, 629 (2008); see *DiGiacinto v. Rector & Visitors of George Mason Univ.*, 281 Va. 127, 134 (2011) (interpreting Article I, Section 13 “co-extensive[ly]” with the Second Amendment).

Fortunately, many present-day Virginian leaders are following in the Framers’ footsteps, continuing the Commonwealth’s long tradition of resisting disarmament and tyranny. Eighteen Commonwealth’s Attorneys – so far – have flatly refused to enforce this unprecedented gun ban against their constituents, objecting on constitutional grounds.<sup>14</sup> Thirteen County Sheriffs have done the same.<sup>15</sup> And two circuit courts have preliminarily enjoined the Challenged Statutes, finding that the Commonwealth’s ban likely violates the Virginia Constitution.<sup>16</sup> Finally, a panel of three circuit judges appointed by this Court unanimously rejected the

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<sup>14</sup> VA-Alert, Virginia Citizens Defense League (July 2, 2026), <https://tinyurl.com/4p4787un>.

<sup>15</sup> *Id.*

<sup>16</sup> Petitioner’s Ex. B; *Santolla v. Katz*, 2026 Va. Cir. LEXIS 171 (Washington Cnty. June 29, 2026).

Commonwealth’s invitation to short-circuit four independent challenges to the gun ban. See Exhibit A, Order Denying Application to Transfer Pursuant to Va. Code § 267.4 (July 6, 2026).

Meanwhile, just last week the United States Supreme Court granted certiorari to review challenges to the “assault weapons” bans of two other states.<sup>17</sup> Given the absence of a circuit split on the matter, and the Court’s recent language supportive of Americans’ ownership of common firearms pejoratively labeled “assault weapons,” it seems fairly clear how that consolidated case will be decided.

Even so Petitioner, together with the Attorney General representing him, continues to resist Virginia’s Constitution and the rights of its people. In urging this Court to stay injunctions issued by two circuit courts below, Petitioner asks this Court to employ a “collective rights” theory that has been rejected by the decisions of at least five Virginia circuit courts, the Court of Appeals, and indeed, *this Court itself* – not to mention the U.S. Supreme Court – all on an emergency basis. And he asks this Court to do so contemporaneously with the Nation’s 250th birthday – commemorating a quarter-millennium of freedom, which for centuries has been secured against infringement by “the right of the people to keep and bear arms.”

The only proper response to this madness is “no.” Virginia can rightfully

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<sup>17</sup> *Viramontes v. Cook County*, 2026 U.S. LEXIS 2893 (June 30, 2026); *Grant v. Higgins*, 2026 U.S. LEXIS 2887 (June 30, 2026).

claim title to being the birthplace of Americans' freedom, and it is only fitting for Virginia's courts to put a stop to any attempt to extinguish that freedom now. This Court should deny Petitioner's Motion to preserve the centuries-old status quo.

### **STANDARD OF REVIEW**

When “used to obtain an interlocutory appeal, a petition for review under Code § 8.01-626 seeks an ‘extraordinary remedy.’” *Koski v. Republican Nat’l Comm.*, 926 S.E.2d 801, 803 (Va. 2026). It follows that a stay of a preliminary injunction is even more “extraordinary.” Indeed, “the purpose of a stay pending appeal ‘is to preserve the *status quo* pending appellate determination,’” *Thompson v. Fairfax Cnty. Dep’t of Family Servs.*, 62 Va. App. 350, 377 n.17 (2013), which is “the ‘last uncontested status between the parties which preceded the controversy.’” *Smith v. Faith Baptist Church*, 110 Va. Cir. 70, 71-72 (Chesapeake 2022). In contrast, where an injunction already “preserve[s] the status quo between the parties while the litigation is ongoing,” *Loudoun Cnty. Sch. Bd. v. Cross*, 2021 Va. LEXIS 141, at \*17 (Aug. 30, 2021), a stay would undermine the status quo. Finally, in determining a request for a stay pending appeal, this Court does not require litigation of the injunction factors, which would be duplicative of “the factors outlined in Rule 3:26” that this Court would reach on “appellate review of the circuit court’s ... preliminary injunction....” *Koski*, 926 S.E.2d 289, 290 (omitting analysis of Petitioner’s proposed factors); *see also Koski*, 926 S.E.2d at 803 (noting the same).

## ARGUMENT

### **I. Banning Overwhelmingly Popular Firearms and Magazines “Presents Serious Questions” Under the Virginia Constitution, Which Militates *Against* a Stay.**

At the outset, Petitioner claims Respondents’ entitlement to preliminary relief is “debatable” because the injunction issued below “presents serious questions” and “conflict[s]” with a denial of preliminary relief in *Curtis v. Katz*, No. CL26-2454 (Spotsylvania Cir. Ct.). Emergency Motion to Stay Circuit Court Order Pending Review (“Mot.”) at 10; see Petitioner’s Ex. C. But it is *Respondents* who have shown “serious questions” as to the Challenged Statutes’ constitutionality, which warranted the injunction below, and which warrants *preserving* the pre-July 1 status quo here. Indeed, by conceding that it is “debatable” whether the Challenged Statutes violate Virginians’ constitutional rights, Petitioner in fact demonstrates why the injunctions against enforcement must be maintained.

Petitioner also claims that no injunction can issue “where one circuit court denies preliminary relief ... and another suspends enforcement....” Mot. at 10-11. But if that were so, any court’s denial of an injunction would foreclose all other courts from issuing one, on the theory that the likelihood of success had become “debatable.” That is not the law. As the court below put it, “I don’t see that I’m bound by Judge Glover’s opinion [in *Curtis*], nor is he bound by my opinion.” Petitioner’s Ex. A (“Tr.”) 91 ll.21-23.

### **A. The Court Below Applied the Appropriate Framework.**

Next, accusing the court below of having “chartered its own course” in analyzing Article I, Section 13, Petitioner claims that the court “did not faithfully apply either” (i) the Supreme Court’s *Bruen* test<sup>18</sup> or (ii) what Petitioner terms “the Virginia methodology,” a legally infirm “judge-empowering ‘interest-balancing’”<sup>19</sup> framework he invented below. Mot. at 12. Under the *Bruen* framework, courts are directed to look to the Nation’s historical tradition of firearm regulation to see whether modern regulations fit within it. 597 U.S. at 17. In contrast, under Petitioner’s concocted framework that no Virginia court has adopted and no federal court uses, a court would determine whether the challenged law is “reasonably fitted to the Commonwealth’s substantial public-safety interest and narrowly focused on the harms the General Assembly identified.” Defendant Katz’s Opposition to Motion for Preliminary Injunction (“Opp.”) at 22. In fact, the court’s analysis below passes either test.

For starters, the circuit court unambiguously adopted, and then cleanly applied, the correct framework. First, the court properly applied this Court’s holding in *DiGiacinto*, explaining that Article I, Section 13 is “coextensive with the protection of the Second Amendment...” Tr. 85 ll.1-6. Second, as the court

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<sup>18</sup> *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1, 17 (2022).

<sup>19</sup> *Bruen*, 597 U.S. at 22.

explained, “federal cases that have interpreted the Second Amendment” therefore “are [in]structive in this case.” *Id.* 11.7-9. Third, applying *Bruen*’s framework, the court noted that “Plaintiff Crump is an ordinary, law-abiding adult citizen as part of the people who Article I, Section 13 protects,” and that “the firearms and magazines to be prohibited by Senate Bill 749 are in common use and constitute bearable arms....” *Id.* 86 11.4-9; *cf. Bruen*, 597 U.S. at 28, 31-32. Fourth, the court thus found that “Article I, Section 13 ... clearly covers the plaintiff’s conduct,” and “[t]he burden shifts to the government to prove that the regulation is consistent with this nation’s historical tradition.” *Tr.* 86 11.12-17; *cf. Bruen*, 597 U.S. at 33-34. And fifth, as to that burden, the court explained that “[i]t’s unlikely that the government can meet the *Bruen* burden of proof at trial.” *Tr.* 86 11.20-22; *cf. Bruen*, 597 U.S. at 38-39. This was quintessentially the analysis that *DiGiacinto* and *Bruen* require.

Ignoring all of this, Petitioner cherry-picks (*Mot.* at 3, 6, 12-13) a single phrase from the circuit court’s oral decision, finding that “[t]here appears to be no rational basis for the characteristics listed [in SB749] which would transform a legal firearm into an illegal assault firearm.” *Tr.* 87 11.18-21. This single phrase, Petitioner claims, means that the lower court in fact abandoned *Bruen* altogether, and instead applied a “freestanding ‘lethality’ test....” *Mot.* at 12. But Petitioner grasps at straws. In fact, the lower court’s brief discussion of SB749’s “feature-based” lack of a rational basis appeared not in its *Bruen* analysis, but *after*, when the court weighed

“the balance of hardships” and the “public interest factors set forth in Rule 3:26. Tr. 87-88. In other words, Petitioner objects that the court applied a standard *too deferential* to him, under which he *still lost*.

Moreover, it was *Petitioner himself* who invited the court to consider the “lethality” of the firearms banned by SB749. In opposing Respondents’ motion below, Petitioner claimed (erroneously) that the banned firearms “are weapons of war,” with excessive “*lethality*” which makes them “unnecessary and even counterproductive for civilian defense.” Opp. at 18; *see also id.* at 28 (claiming the balance of equities favors the government because of the purported “elevated *lethality* that assault firearms and large-capacity magazines bring”). Petitioner thus *invited the lower court to consider the lethality* of the banned arms as part of the balance of equities, *but now faults the court for having done just that*. This Court should reject Petitioner’s self-serving about-face, attempting to manufacture error where there was none.

Of course, even if the lower court *had* considered lethality as part of its merits analysis, Petitioner *asked the court to do that as well*. Indeed, the “Virginia methodology” Petitioner offered below asks whether a law is “reasonably fitted to the Commonwealth’s substantial public-safety interest,” which Petitioner claimed to be preventing “mass-casualty events.” Opp. at 22, 28. *That* was the framework Petitioner urged on the lower court. And so it is hardly objectionable that the court

considered whether SB749’s features-based ban “make[s] the [firearms] more lethal” (Tr. 87 ll.23) – *i.e.*, considering the link between purpose and effect. Again, Petitioner *asked for* the very analysis to which he now objects – only because the result still came out against him. The hypocrisy is palpable.

**B. Petitioner Faults the Court Below for Following This Court’s Lead.**

In *DiGiacinto*, 281 Va. 127, 134, this Court found that Article I, Section 13 and the federal Second Amendment are “co-extensive.” Of course, that analysis is not helpful to Petitioner’s case, because it means the Challenged Statutes are “presumptively unconstitutional” (*Wolford v. Lopez*, 2026 U.S. LEXIS 2720, at \*14 (June 25, 2026)) and subject to a rigorous historical test in which the government bears the burden. And so, Petitioner claims it was “err[or]” for the court below to have followed *DiGiacinto*’s plain statements that the federal and state rights are coextensive. Mot. at 16. Instead, Petitioner points to more general language from this Court’s decision in *Vlaming v. W. Point Sch. Bd.*, 302 Va. 504 (2023) – a religion and speech case that did not examine Article I, Section 13. Mot. at 14.

Under *Vlaming*, Petitioner claims, “[w]here the texts of the federal and Virginia Constitutions differ, ‘interpretations of the former inform but do not necessarily govern the construction of the latter.’” Mot. at 14. But even if that were the appropriate standard, the circuit court’s opinion passes the test. Never did the court below claim *Bruen* to be *binding*. Rather, the court merely found *Bruen*

“[in]structive in this case” (Tr. 85 1.9 (error in transcript)) – which is precisely the “inform[ing]” *Vlaming* permits. Nor is the lower court’s conclusion surprising. *Bruen* examined the Second Amendment “right of the people to keep and bear arms,” and so the circuit court applied those teachings to the *very same language* in Article I, Section 13. Simply following the U.S. Supreme Court’s interpretive guidance on identical constitutional language is hardly some egregious legal error warranting an emergency stay.

### **C. The Circuit Court’s Conclusions Find Ample Support in the Record.**

Taking the kitchen sink approach, Petitioner raises a series of objections to the circuit court’s analysis. Mot. at 16-18. Generally, his assertion is that many of the court’s findings “are unsupported on this record.” *Id.* at 16. But Petitioner cites no authority that prescribes some minimum level of detail that must accompany a circuit court’s *preliminary* injunction opinion. Quite to the contrary, Rule 3:26 provides the “threshold requirement for preliminary injunctions,” including the various factors that courts “must” examine. And the court below met that standard, examining each factor and explaining its reasoning for each holding. Tr. 81-90. The court’s opinion does not differ meaningfully in depth or breadth from the analysis conducted by the Spotsylvania and Washington Circuit Courts on this issue. *Cf.* Petitioner’s Exs. C, E. Indeed, preliminary injunction motions are routinely decided on minimal records, and at times without any oral or written opinion at all. The record and opinion below

are *more than sufficient* to demonstrate that the circuit court employed the correct legal framework, carefully analyzed each issue, and reached reasonable *preliminary* conclusions supported by ample factual basis and legal authority. Even so, Petitioner’s scattershot objections are baseless.

*First*, Petitioner disputes that “firearms and magazines ... constitute protected bearable arms,” asserting that “*magazines* are accessories.” Mot. at 16. But that distracts from the undisputed – that “all *firearms*” are “arms.” *Heller*, 554 U.S. at 581. And it ignores both the Supreme Court’s recent pronouncement that the term “arms” includes all “implements used for offense or defense” and its 1939 discussion of “cartridge boxes” – the ancestor to box magazines – as “arms.” *Wolford*, 2026 U.S. LEXIS 2720, at \*10, \*14; *United States v. Miller*, 307 U.S. 174, 181 (1939).

*Second*, Petitioner apparently concedes that the weapons regulated by SB749 are commonly owned, but recasts the proper inquiry as “common use for lawful self-defense, not raw ownership numbers.” Mot. at 16. But the Supreme Court has unanimously resolved this question, explaining that “[t]he AR-15 is the most popular rifle in the country” – “widely legal and purchased by ordinary consumers.” *Smith & Wesson*, 605 U.S. at 297, 283; *see also Snope v. Brown*, 145 S. Ct. 1534, 1535 (2025) (Thomas, J., dissenting from denial of certiorari) (“AR-15[], the most popular civilian rifle in America.”); Plaintiffs’ Reply Memorandum ISO TRO/PI (“Reply”) at 21 (providing evidence of use for self-defense); Plaintiffs’ Memorandum ISO

TRO/PI at 16 (cases showing tens of millions of “assault firearms” in circulation).

*Third*, Petitioner claims the lower court “failed to engage in *any* historical tradition analysis....” Mot. at 17. Not so. As discussed, the court’s analysis carefully tracks the *Bruen* framework, and it found Petitioner’s preliminary historical showing insufficient. Tr. 86 ll.20-22 (“It’s unlikely that the government can meet the *Bruen* burden of proof at trial.”); *see also Bruen*, 597 U.S. at 60 (“[W]e are not obliged to sift the historical materials for evidence to sustain [the] statute. That is [Petitioner’s] burden.”). And if it is more detail Petitioner desires, Respondents’ extensive briefing explains how all of his purported historical analogues have literally nothing to do with anything relevant here. *See Reply* at 30-34.<sup>20</sup>

*Fourth*, Petitioner vaguely invokes *Bruen*’s language about “unprecedented societal concerns or dramatic technological changes,” claiming that this should have lessened his burden to show a comparable historical tradition of firearm regulation.

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<sup>20</sup> Interestingly enough, although faulting the circuit court for the brevity of its historical analysis, it was *Petitioner* who glossed over the historical record below. In fact, after offering a long series of arguments as to why *Bruen*’s historical analysis could be avoided altogether, Petitioner then offered – as an afterthought – a paltry two-and-a-half pages of historical analysis. Opp. at 24-27. Likewise at oral argument, Petitioner’s historical analysis was nowhere to be found, with government counsel only vaguely referencing “sort of, a compiling that was stuff that we – that either our experts included or elsewhere.” Tr. 32 l.24 to 33 l.1; *see also id.* 47 ll.4-11 (referencing that the government had cited three 20th-century laws). Thus, if it was a robust historical analysis that Petitioner had wanted, perhaps he should have focused on that issue. *See Bruen*, 597 U.S. at 25 n.6 (“‘[W]e follow the principle of party presentation.’ ... Courts are thus entitled to decide a case based on the historical record compiled by the parties.”).

Mot. at 17; *see also* Tr. 33 ll. 4-8 (“there weren’t any semi-automatic firearms ... at the founding”). But the Supreme Court has expressly foreclosed this very argument. *See Heller*, 554 U.S. at 582 (“the argument ... that only those arms in existence in the 18th century are protected by the Second Amendment” “border[s] on the frivolous”); *United States v. Rahimi*, 602 U.S. 680, 692 (2024) (“applying the protections of the right only to muskets and sabers” would be “mistaken”).

*Fifth*, Petitioner points to a few nonbinding decisions of federal courts which have upheld other “assault weapons” bans. Mot. at 17-18. But it is hardly reversible error merely that two Virginia courts were unpersuaded by this nonbinding federal authority. Plus, these intermediate federal decisions all predate the U.S. Supreme Court’s unequivocal holding – joined by every member of the Court – that “[t]he AR-15 is the most popular rifle in the country” (*Smith & Wesson*, 605 U.S. at 297), and they ignore *Heller*’s prior holding that bans on common firearms are simply “invalid” (554 U.S. at 629). Virginia’s courts need not head down a clearly ill-fated path merely because some federal courts previously have taken it. It is worth remembering that, prior to *Heller*, nearly all federal courts had concluded that the Second Amendment does not so much as protect an individual right. *See Heller*, 554 U.S. at 638 n.2 (Stevens, J., dissenting) (collecting cases). They were all aligned – and they were all wrong. Now, with the Supreme Court’s recent decision to review two “assault weapons” bans in *Viramontes* and *Grant*, it seems that the writing is on

the wall. And the fact that *two* Virginia circuit courts have chosen to follow the Supreme Court's lead on the issue hardly justifies the emergency stay Petitioner seeks.

At bottom, rather than identifying any clear legal error below, Petitioner essentially asks for this Court to relitigate the details of this case on an emergency basis. But it is not this Court's role to sit as a trial court in the first instance, simply because Petitioner disagrees with the result below. Indeed, finding that Respondents had raised serious questions as to the constitutionality of the Challenged Statutes, the court simply preserved the status quo – pausing implementation and enforcement pending a full merits review. As Respondents explained, that status quo has existed since the first colonists stepped foot on dry land in 1607. Maintaining more than four centuries of uninterrupted freedom – rather than allowing a hurriedly-enacted and unprecedented gun ban to take effect without substantive legal analysis – is a quintessential use of a temporary injunction. Nor is the circuit court's decision an aberration – as discussed, another circuit court reached a similar result.

#### **D. Petitioner's Remaining Objections Are Meritless.**

Though not contained in his argument section, Petitioner's Motion raises a series of additional objections to the decision below. Each fails to clear the starting gate. *First*, Petitioner claims that the order below “expressly creates a conflict – overriding the ruling of a circuit court judge denying an injunction in *his own*

county.” Mot. at 2. Not so.<sup>21</sup> The *Curtis* order simply *declined to enjoin* Petitioner’s enforcement of the law – it *does not require* enforcement. Nor is it surprising that the order below applies against Petitioner statewide. Circuit courts are courts of statewide jurisdiction (see Va. Code § 8.01-620), and it would defy logic to enjoin Petitioner from enforcing the law against Respondent Crump *until* he crosses the Spotsylvania County line.

*Second*, neither does the decision below “usurp this Court’s power” on the theory that this Court has “empanel[ed] a trio of judges to determine whether the cases ... should be consolidated.” Mot. at 2. On the contrary, Va. Code § 8.01-267.4 it is that “panel of circuit court judges” which decides the consolidation motion, not this Court. This Court’s ministerial act to appoint that panel constituted neither a determination that the cases should be consolidated, nor a withdrawal of the individual lower courts’ authority to hear and rule in their respective cases unless and until the cases are in fact consolidated. And in any event, Petitioner’s objection is now moot, as the panel unanimously denied his consolidation motion on July 6, 2026. Exhibit A.

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<sup>21</sup> *Cf. Pickup v. Brown*, 740 F.3d 1208, 1221-22 (9th Cir. 2014) (“In *Welch* ... the district court ruled that Plaintiffs were likely to succeed on the merits.... In *Pickup* ... the district court ruled that Plaintiffs were unlikely to succeed on the merits.... We address both appeals in this opinion.”). Different courts routinely reach different results in different cases. This is not a case where lower courts have arrived at conflicting decisions about, for example, who owns a piece of real estate.

*Third*, Petitioner seeks to manufacture disagreement, claiming that the opinion below “disagrees with the reasoning of the other circuit court that reached a similar conclusion enjoining enforcement.” But that is ridiculous. To the contrary, both courts that issued injunctions determined that Article I, Section 13 protects an individual right. Tr. 84-85 (*Crump*); Petitioner’s Ex. E at 5 (*Santolla*). Both courts relied on *DiGiacinto* for the notion that the federal and state rights are coextensive. Tr. 85; Petitioner’s Ex. E at 4. Both courts found *Bruen*’s analysis instructive. Tr. 85; Petitioner’s Ex. E at 5. Both courts found that the plain text had been implicated, and so the burden fell to the Commonwealth. Tr. 86; Petitioner’s Ex. E at 5-6. And both courts found that the Commonwealth had failed to meet its burden. Tr. 86; Petitioner’s Ex. E at 6-7. Those are not courts divided, but rather courts in lockstep.

This Court should reject Petitioner’s frivolous attempts to sow conflict and manufacture division among the Commonwealth’s courts. The courts are doing precisely what they are supposed to be doing. Petitioner might not like the results, but the legal process is working as designed.

## **II. The Injunction Is Necessary to Prevent Irreparable Harm to Enumerated Rights.**

### **A. The Commonwealth’s Purported Harms Do Not Supersede Constitutional Rights.**

Petitioner vaguely asserts that the injunction inflicts irreparable “sovereign and public-safety harms,” to which he claims the court below “gave virtually no

consideration....” Mot. at 18. To the contrary, Petitioner entirely ignores the black-letter law – cited by the court below – that “the loss of constitutional freedoms, ‘for even minimal periods of time, unquestionably constitutes irreparable injury.’” *Leaders of a Beautiful Struggle v. Balt. Police Dep’t*, 2 F.4th 330, 346 (4th Cir. 2021) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)); accord Tr. 87 ll.1-5. Thus, wherever “there is a likely constitutional violation, the irreparable harm factor is satisfied.” *Leaders of a Beautiful Struggle*, 2 F.4th at 346.

Resisting this natural conclusion, Petitioner asserts that “[h]alting enforcement” of the “presumptively constitutional” Challenged Statutes “does not preserve the constitutional status quo.” Mot. at 19. But that is gibberish. Because the Challenged Statutes restrict conduct covered by the plain text of Article I, Section 13, they are “presumptively unconstitutional” under the *Bruen* framework. *Wolford*, 2026 U.S. LEXIS 2720, at \*14. And the “constitutional status quo” is “the ‘last uncontested status between the parties *which preceded the controversy.*’” *Smith*, 110 Va. Cir. at 71-72 (emphasis added). The “status quo” is *centuries of freedom*, not one week of sweeping and ahistorical gun control.

### **B. The Injunction Creates No “Confusion.”**

Finally, Petitioner claims the injunction should be stayed because it causes “confusion.” Mot. at 20-21. On the contrary, Petitioner expresses no confusion as to *who* is enjoined from enforcing the Challenged Statutes: “It binds Katz ... but it

does not bind” nonparties. *Id.* at 20. In fact, the injunction reduces confusion that otherwise might exist. At present, eighteen Commonwealth’s Attorneys and thirteen County Sheriffs have refused to enforce the Challenged Statutes on constitutional grounds. Contrary to that (growing) patchwork of nonenforcement, the injunction provides clarity: the Virginia State Police cannot enforce the Challenged Statutes anywhere, against anyone.

### **III. The Equitable Factors Support Respondents.**

Petitioner claims “[t]he balance of harms and public interest strongly favor a stay.” Mot. at 22. They do not. As this Court has explained, “there is a significant public interest in protecting the constitutional rights of the citizenry from being transgressed by an unconstitutional statute. ... [W]hether a preliminary injunction is in the public interest often turns on whether the constitutional claim appears valid or not.” *Commonwealth v. Sadler Bros. Oil Co.*, 2023 Va. LEXIS 68, at 13 n.5 (Oct. 13, 2023). Petitioner completely ignores the constitutional harm to Respondents (and indeed all Virginians), demurring that the Challenged Statutes “do not prevent Crump from possessing covered firearms he already lawfully owns.” Mot. at 23. But they *do* prevent Crump from acquiring *more* firearms and magazines (and in the case of other Virginians, *any*, see Tr. 29 ll.11-12), as is their Article I, Section 13 right. Finally, Petitioner cites the purported “breadth of the injunction” (Mot. at 22), ignoring that the court below carefully tailored it to be party-specific and of limited

duration. Tr. 89-90. All told, these are not the hallmarks of an erroneously issued or overly broad injunction, but rather a carefully considered and circumscribed one. The injunction preserves the status quo and enjoins enforcement of an unpopular and unprecedented upheaval of a centuries-old constitutional right. This Court should decline to disturb it on an emergency basis.

#### **IV. Below, Petitioner Advanced a Legal Theory So Baseless That He Omits Any Mention of It Here.**

To be sure, Petitioner advances a number of baseless theories in his Motion, none of which justifies issuing the emergency stay he seeks. But Petitioner’s most baseless theory is one so absurd that he apparently was unwilling to repeat it to this Court. Nevertheless, it is worth recounting, because it sheds light on the circumstances surrounding the circuit court’s issuance of the injunction below. And it demonstrates the brazen revisionism and lawlessness that pervade this Commonwealth’s recently elected administration. This extreme disregard for settled law is yet another reason to deny Petitioner the emergency stay he seeks.

Below, Petitioner opposed preliminary relief principally on the theory that Article I, Section 13 *protects no enforceable individual right*. Rather, Petitioner insisted that the Virginia Constitution guarantees only a “collective right tied to militia service” (Opp. at 11), one that inheres not in individuals, but rather *the Commonwealth itself*. Thus, Petitioner argued (1) that the “right of the people to keep and bear arms” in fact protects no “*people*” at all; (2) that Article I, Section 13’s

only purpose is to protect the Commonwealth *from itself*; and (3) that Respondents' only recourse against the Challenged Statutes is to sue in federal court.<sup>22</sup>

But Petitioner's atextual and ahistorical "collective rights" theory has been universally rejected by the Framers,<sup>23</sup> the U.S. Supreme Court,<sup>24</sup> *this Court*,<sup>25</sup> the Virginia Court of Appeals,<sup>26</sup> numerous Virginia circuit courts,<sup>27</sup> the U.S. Congress,<sup>28</sup> the federal Executive Branch,<sup>29</sup> the Virginia General Assembly,<sup>30</sup> and prior Virginia

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<sup>22</sup> *But see* Hon. Stephen R. McCullough, *A Vanishing Virginia Constitution?*, 46 U. Rich. L. Rev. 347, 348 (2011) (cautioning against "giving short shrift to rights that Virginians have enjoyed for over two centuries").

<sup>23</sup> *See* Introduction, *supra*.

<sup>24</sup> *Heller*, 554 U.S. at 592.

<sup>25</sup> *DiGiacinto*, 281 Va. at 134; *accord* Hon. Stephen R. McCullough, *Article I Section 13 of the Virginia Constitution: Of Militias and an Individual Right to Bear Arms*, 48 U. Rich. L. Rev. 215, 217 (2013) ("from its inception, article I, section 13 was intended to, and was readily understood as, protecting an individual right to bear arms").

<sup>26</sup> *Ginevan v. Commonwealth*, 83 Va. App. 1, 15 n.8 (2024) ("the Constitution of Virginia also protects the right to bear arms").

<sup>27</sup> *See, e.g., Elhert v. Settle*, 105 Va. Cir. 326 (Lynchburg 2020); *Stickley v. City of Winchester*, 110 Va. Cir. 300 (Winchester 2022); *LaFave v. County of Fairfax*, 2023 Va. Cir. LEXIS 203 (Fairfax Cnty. June 23, 2023); *Wilson v. Hanley*, 116 Va. Cir. 425 (Lynchburg 2025).

<sup>28</sup> Subcomm. on the Constitution, U.S. Senate Comm. on the Judiciary, 97th Cong., The Right to Keep and Bear Arms (Comm. Print 1982), <https://tinyurl.com/muhye239>.

<sup>29</sup> Complaint for Declaratory and Injunctive Relief ¶2, *United States v. Virginia*, No. 3:26-cv-00610 (E.D. Va. July 1, 2026), ECF No. 1.

<sup>30</sup> Journal of the Senate of Virginia 251 (1964), <https://tinyurl.com/4vbpzvbf> ("the right of the citizen is entwined in the very roots of the founding of this Commonwealth when it was not only the individual's right to bear arms but his duty to bear arms in the defense of his community").

Attorneys General.<sup>31</sup> And so it is hardly surprising that two circuit courts below rejected Petitioner's claims, finding that Article I, Section 13 clearly protects an individual right.

It should give this Court pause that, even though Petitioner's "collective rights" theory has been thoroughly and universally rejected, he unabashedly continues to advance it in his zeal to infringe one of Virginia's most precious freedoms. Indeed, the very concept of a bill of rights is that it serves as a *limitation* on the power *of* government, not a *grant* of power *to* government. See *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624, 638 (1943). This Court should deny Petitioner's Motion to help preserve that foundational principle, and should reaffirm that individual Virginians do indeed have state constitutional protection of the God-given, pre-existing right to keep and bear the arms that the Challenged Statutes outlaw.

## CONCLUSION

For the foregoing reasons, Petitioner's Motion should be denied.

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<sup>31</sup> Opinion from Att'y Gen. Judith W. Jagdmann to Hon. R. Creigh Deeds, No. 05-078, 2006 WL 304006 (Jan. 4, 2006); Opinion of Att'y Gen. Kenneth T. Cuccinelli, II to Hon. Thomas A. "Tag" Greason, No. 10-009, 2010 WL 1129930 (Mar. 16, 2010).

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

The undersigned certifies that, on July 8, 2026 (before 5:00 p.m.), a true and accurate copy of the foregoing *Respondents' Opposition to Petitioner's Emergency Motion to Stay Circuit Court Order Pending Review* was e-mailed to the following:

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