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VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF LYNCHBURG

MELODY BOYER,
NATASHA ROUSSEAU,
GUN OWNERS OF AMERICA, INC.,
GUN OWNERS FOUNDATION,
VIRGINIA CITIZENS DEFENSE LEAGUE, and
VIRGINIA CITIZENS DEFENSE FOUNDATION,

Plaintiffs,

v. **Case No. CL26000986-00**

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

Defendant.

PLAINTIFFS' MEMORANDUM IN SUPPORT OF THEIR
MOTION FOR PRELIMINARY INJUNCTION

COME NOW Plaintiffs Melody Boyer, Natasha Rousseau, Gun Owners of America, Inc. ("GOA"), Gun Owners Foundation ("GOF"), Virginia Citizens Defense League ("VCDL"), and Virginia Citizens Defense Foundation ("VCDF"), by counsel, pursuant to Rules 3:26 and 4:15 of the Rules of the Supreme Court of Virginia, and in support of their Motion for Preliminary Injunction state the following:

INTRODUCTION

This case involves an Article I, Section 13 challenge to (1) the Commonwealth's ongoing ban on the purchase of handguns and so-called "assault firearms" by legal adults under the age of 21, and (2) more broadly, the Commonwealth's re-criminalization of the private marketplace of firearms that has existed in Virginia for centuries.

On April 22, 2026, Virginia Governor Abigail Spanberger signed into law HB1525. Citing "emergency" powers and utilizing a constitutionally dubious process, the law purported to become effective immediately upon the Governor's signature. Among other changes, HB1525 added Subsection (C) to Va. Code § 18.2-308.7, providing that "[i]t is unlawful for any person younger than 21 years of age to knowingly and intentionally purchase a handgun or assault firearm anywhere in the Commonwealth." This single sentence was the General Assembly's retaliatory attempt to overrule this Court's line of decisions ending with *Wilson v. Hanley*, 116 Va. Cir. 425 (Lynchburg 2025), which ultimately struck down the Commonwealth's separate "universal background check" statute, Va. Code § 18.2-308.2:5, a statute that this Court invalidated precisely *because* it prevented 18-to-20-year-olds from acquiring certain firearms (together with Va. Code § 18.2-308.7(C), the "Challenged Statutes"). Plaintiffs challenge both the 18-to-20-year-old ban *and* the "universal background check" statute here.

These Challenged Statutes strip *all Virginians* of their time-honored right to make private transfers of firearms. And they eviscerate the recognized Article I, Section 13 "right of adults under 21 to purchase a handgun, the 'quintessential self-defense weapon.'" *Elhert v. Settle*, 105 Va. Cir. 326, 336 (Lynchburg 2020) (quoting *District of Columbia v. Heller*, 554 U.S. 570, 629 (2008)). Indeed, as to 18-to-20-year-olds, the Challenged Statutes "amount[] to a prohibition of an entire class of 'arms' that is overwhelmingly chosen by American society" for self-defense, *Heller*, 554 U.S. at 628, applied to a subset of persons who are clearly part of "the people." Accordingly, under the Virginia Constitution's independent protection of the right to keep and bear arms, the Challenged Statutes are flatly unconstitutional. *See* Va. Const. art. I, § 13.

Plaintiffs are two individuals and four nonprofit organizations dedicated to preserving the enumerated rights of gun owners across the Commonwealth. The Individual Plaintiffs are law-

abiding adults who wish to engage in innocuous, constitutionally protected conduct now criminalized by the Challenged Statutes – the private transfer of handguns and so-called "assault firearms" to adults between the ages of 18 and 21. The Organizational Plaintiffs represent tens of thousands of similarly situated Virginians who will be irreparably harmed absent the entry of injunctive relief. Plaintiffs therefore request this Court's immediate intervention to preserve the status quo and their Article I, Section 13 rights.

LEGAL STANDARD

A court may issue a preliminary injunction "if it first determines that the movant will more likely than not suffer irreparable harm without the preliminary injunction." Va. Sup. Ct. R. 3:26(c). Once "a court finds that the threshold has been met, the court must determine whether three factors support the issuance of the injunction: (1) 'the movant has asserted a legally viable claim based on credible facts … [that will] more likely than not succeed on the merits'; (2) 'the balance of hardships … favors granting the preliminary injunction'; and (3) 'the public interest, if any, supports the issuance of a preliminary injunction.'" *Cartograf USA, Inc. v. Comerica Bank*, 85 Va. App. 1, 19 (2025) (quoting Va. Sup. Ct. R. 3:26(d)). To that end, "[a]n application for a temporary injunction may be supported … by an affidavit or verified pleading." Va. Code § 8.01-628. Even if a court "cannot determine at the time that the movant will likely succeed on the merits," the court still may issue a preliminary injunction "upon a clear showing that the underlying claim has substantial merit" and "the likely irreparable harm to the movant is severe and any corresponding harm to the nonmovant is slight...." Va. Sup. Ct. R. 3:26(e).

In analogous federal cases, courts often find that the violation of a constitutional right, "for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (First Amendment); *see also N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597

U.S. 1, 70 (2022) ("The constitutional right to bear arms … is not 'a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees.'"). And in cases "when the Government is the opposing party," the equitable factors "merge." *Nken v. Holder*, 556 U.S. 418, 435 (2009). Thus, because a governmental defendant "is in no way harmed by issuance of an injunction … from enforcing unconstitutional restrictions," and "upholding constitutional rights is in the public interest," *Legend Night Club v. Miller*, 637 F.3d 291, 302-03 (4th Cir. 2011), the remaining injunction factors generally flow once a challenger establishes a likely violation of a constitutional right.

ARGUMENT

I. PLAINTIFFS HAVE STANDING.

Plaintiffs Boyer and Rousseau (the "Individual Plaintiffs") are law-abiding adults under the age of 21 who wish to acquire handguns, together with semiautomatic firearms now disparagingly classified by the Virginia Code as "assault firearms,"[1] via private, noncommercial transfers from a local Virginia resident, free from criminal liability under the Challenged Statutes – just as Virginians have done since the 1600s. To that end, Plaintiffs Boyer and Rousseau wish to immediately acquire handguns and "assault firearms" including, and as is relevant here, from

[1] To be clear, Plaintiffs here do not challenge the Virginia statutes generally restricting the importation, sale, manufacture, purchase, barter, transfer, and public carry of "assault firearms." *See* Va. Code §§ 18.2-287.4:1, 18.2-308.09(1), 18.2-308.1:9, 18.2-308.2:1, 18.2- 308.2:2(A), 18.2-308.2:3, 18.2-308.2:2(F)(1)-(7), 18.2-308.2:5(E), 18.2-287.4, 18.2-309.1, 19.2- 386.28. This is not an "assault firearms" case, and those statutes already have been preliminarily enjoined in *Crump v. Katz*, No. CL26000201-00 (Va. Cir. Ct. Lancaster Cnty.), and *Santolla v. Katz*, No. CL26-1139 (Va. Cir. Ct. Washington Cnty.). Rather, Plaintiffs challenge, *inter alia*, Va. Code § 18.2-308.7(C), which singles out 18-to-20-year-olds for differential treatment with respect to "assault firearms." Thus, Plaintiffs do not ask this Court to rule on any "assault firearms" ban generally, but rather assert only that, whatever the rule is with respect to "assault firearms" for adults ages 21 and older, it should be the same for adults ages 18 to 20. In other words, Plaintiffs seek a ruling that 18-to-20-year-olds enjoy the full scope of Article I, Section 13 rights, and that any special restriction applicable to them, but not older adults, is unconstitutional.

Ryan Thomas, a lawful gun owner residing within the City of Lynchburg. However, Plaintiffs cannot lawfully engage in these planned transfers due to the Challenged Statutes. *See* Compl. Ex. B ("Boyer Declaration") ¶¶5-8; Compl. Ex. C ("Rousseau Declaration") ¶¶5-8; Declaration of Ryan Thomas ("Thomas Declaration") ¶¶4-9.

For instance, Plaintiff Boyer wishes to purchase via private transfer from Mr. Thomas a Glock 19 pistol for the price of $650, and a 6.5 Grendel AR-15-style semiautomatic rifle for the price of $900. Boyer Declaration ¶¶7-8. Likewise, Plaintiff Rousseau wishes to purchase via private transfer from Mr. Thomas a Smith & Wesson Shield handgun for the price of $300, and an AR-15-style semiautomatic rifle for the price of $900. Rousseau Declaration ¶¶7-8. Mr. Thomas has indicated his desire and willingness to privately sell these firearms to Plaintiffs Boyer and Rousseau at the agreed prices. Thomas Declaration ¶¶6-9. For each of these firearms, Plaintiffs Boyer and Rousseau would acquire them from Mr. Thomas, and Mr. Thomas would sell them to Plaintiffs Boyer and Rousseau, but for Plaintiffs' fear of Defendant's enforcement of the Challenged Statutes against them. Boyer Declaration ¶10, Rousseau Declaration ¶10, Thomas Declaration ¶11.

Indeed, Plaintiffs' desired private transfers are now doubly prohibited under the Challenged Statutes. First, Va. Code § 18.2-308.7(C) prohibits Plaintiffs Boyer and Rousseau from purchasing handguns and "assault firearms" outright, because they are under 21 years of age. Second, Va. Code § 18.2-308.2:5 requires a government-administered background check for all private, noncommercial, intrastate transactions of firearms in the Commonwealth. Not only do Plaintiffs *not* wish to submit to these sorts of background checks (Boyer Declaration ¶10; Rousseau Declaration ¶10), but also federal law independently prohibits licensed dealers from transferring handguns to legal adults under the age of 21. *See* 18 U.S.C. § 922(b)(1) (prohibiting licensed

dealers from transferring any firearm other than a rifle or shotgun to persons under the age of 21). Accordingly, the federal government's background-check system historically has "automatically reject[ed] handgun transfers to individuals under the age of 21." *Wilson v. Hanley*, 116 Va. Cir. 425, 432 (Lynchburg 2025).[2] This is precisely the reason why this Court previously struck down Section 18.2-308.2:5, and there is no reason why the Court should depart from that same finding now.

In addition to Plaintiffs Boyer and Rousseau, Plaintiffs GOA, GOF, VCDL, and VCDF (the "Organizational Plaintiffs") together have tens of thousands of members and supporters across Virginia, many of whom also wish to engage in private firearms transfers, and many of whom are also legal adults under the age of 21. *See* Compl. Ex. D ("Pratt Declaration") ¶¶10-11; Compl. Ex. E ("Van Cleave Declaration") ¶¶10-11. The Organizational Plaintiffs assert the rights and interests of their members and supporters in a representational capacity. Indeed, these members and supporters desire and overwhelmingly support the Organizational Plaintiffs' involvement in this litigation to protect their right to keep and bear arms. Pratt Declaration ¶14; Van Cleave Declaration ¶14. Moreover, protection of the rights and interests advanced in this litigation is germane to the Organizational Plaintiffs' respective missions, which include the preservation and protection of the right to keep and bear arms under federal and state constitutions. The Organizational Plaintiffs routinely litigate cases throughout the country on behalf of their members

[2] Recently, the U.S. Department of Justice has taken the position that Section 922(b)(1) is unconstitutional, and that it should not be enforced. *See* Application of 18 U.S.C. § 922(b)(1) and (c)(1) to Young Adults, 50 Op. O.L.C. __ (Sept. 17, 2026), https://tinyurl.com/2f5uwam5. Even so, there is no evidence that the FBI has yet taken steps to stop enforcing Section 922(b)(1). Even so, the statute remains on the books, and a mere non-enforcement memorandum does not prevent a future administration from resuming enforcement of the statute, including retroactively against licensed dealers during future compliance inspections. Either way, Plaintiffs' Article I, Section 13 rights do not turn on the inherently transient enforcement discretion of federal officials.

and supporters, and they are capable of fully and faithfully representing those persons' interests without participation by each of the individuals. Pratt Declaration ¶15; Van Cleave Declaration ¶15.

Of course, Plaintiffs need not actually violate the law in order to seek relief from the Challenged Statutes. Nor must Plaintiffs await their actual arrest or prosecution to challenge the Challenged Statutes. Rather, a plaintiff can "bring a pre-enforcement suit when he 'has alleged an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute, and there exists a credible threat of prosecution thereunder.'" *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 160 (2014). And courts presume a credible threat of prosecution absent compelling evidence to the contrary. *See, e.g.*, *Antonyuk v. James*, 120 F.4th 941, 1006 (2d Cir. 2024) ("[W]e 'presume … intent [to enforce the law] in the absence of a disavowal by the government or another reason to conclude that no such intent existed.'"); *Bryant v. Woodall*, 1 F.4th 280, 286 (4th Cir. 2021) ("[L]aws that are 'recent and not moribund' typically do present a credible threat."); *Harrell v. Fla. Bar*, 608 F.3d 1241, 1257 (11th Cir. 2010) ("If a challenged law or rule was recently enacted, or if the enforcing authority is defending the challenged law or rule in court, an intent to enforce the rule may be inferred.").

Thus, "[w]hen an individual is subject to such a threat, an actual arrest, prosecution, or other enforcement action is not a prerequisite to challenging the law." *Susan B. Anthony List*, 573 U.S. at 158; *see also MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 128-29 (2007) ("where threatened action by government is concerned, we do not require a plaintiff to expose himself to liability before bringing suit"); *Steffel v. Thompson*, 415 U.S. 452, 459 (1974) (same); *Black v. Commonwealth*, 262 Va. 764, 777-78 (2001) ("Threat of prosecution under a criminal statute 'tends to chill the exercise of [constitutional] rights.'"), *aff'd in part*, *Virginia v. Black*, 538 U.S. 343

(2003). Accordingly, because (i) Plaintiffs' course of conduct is prohibited by the Challenged Statutes, (ii) Defendant is tasked with enforcing the Challenged Statutes, and (iii) Defendant has not disclaimed enforcement of the same, Plaintiffs have standing.

II. INJUNCTIVE RELIEF IS NECESSARY.

A. Plaintiffs Will Suffer Imminent Irreparable Harm Absent Injunctive Relief.

Injunctive relief is appropriate where "a party has shown that party would suffer irreparable harm without the injunction, and that the party has no adequate remedy at law." *May v. R.A. Yancey Lumber Corp.*, 297 Va. 1, 17-18 (2019). Virginia courts have explained that, "[u]nder well-established equitable principles, the party seeking a temporary injunction ordinarily will not suffer irreparable injury if damages provide full compensation." *Dillon v. Northam*, 105 Va. Cir. 402, 411 (Norfolk 2020). Of course, a remedy at law is clearly insufficient to redress the infringement of enumerated constitutional rights, which cannot be assigned a monetary value. Virginia courts, including this one, have made clear that even a "temporary violation of a constitutional right itself is enough to establish irreparable harm." *Lynchburg Range & Training, LLC v. Northam*, 105 Va. Cir. 159, 164 (Lynchburg 2020); *accord Stickley v. City of Winchester*, 110 Va. Cir. 300, 326 (Winchester 2022) ("'the temporary violation of a constitutional right itself is enough to establish irreparable harm'"); *LaFave v. County of Fairfax*, 2023 Va. Cir. LEXIS 203, at *19 (Fairfax Cnty. June 23, 2023) (same). The irreparable injury in question "is the potential harm to the plaintiff – before the trial on the merits – without the preliminary relief." *Dillon*, 105 Va. Cir. at 410.

As detailed below, Plaintiffs clearly demonstrate a violation of their enumerated Article I, Section 13 rights. The Challenged Statutes prohibit all private transfers of firearms and further prohibit legal adults under the age of 21 from purchasing handguns and so-called "assault

firearms." But for the Challenged Statutes, Plaintiffs would engage in these activities with these items. Accordingly, Plaintiffs satisfy the threshold showing of irreparable harm.

B. Plaintiffs Are Likely to Succeed on the Merits Because the Challenged Statutes Violate the Article I, Section 13 Right to Keep and Bear Arms.

1. Article I, Section 13's Text, History, and Methodological Approach.

Article I, Section 13 of the Virginia Constitution 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...." This text incorporated the operative clause[3] of the federal Second Amendment, and was added to Article I, Section 13 in 1971. However, Virginians did not gain any new rights as a result of this modernization of the Virginia Constitution, or even after its original enumeration in the 1776 Declaration of Rights. Rather, protection of the natural, individual right to self-defense is not an act of legislative grace; the right exists with or without its documentary recognition and *pre-exists* any constitution. *See, e.g.*, *District of Columbia v. Heller*, 554 U.S. 570, 592 (2008) ("the Second Amendment, like the First and Fourth Amendments, codified a *pre-existing* right"); *United States v. Cruikshank*, 92 U.S. 542, 553 (1876) ("Neither is it in any manner dependent upon that instrument for its existence."). In other words, Article I, Section 13 is the Commonwealth's recognition of a pre-existing right with which Virginians were endowed by their Creator, and it operates as a fixed limitation on the power of government to enact legislation affecting firearms.

[3] "[T]he right of the people to keep and bear Arms, shall not be infringed." U.S. Const. amend. II. Although Plaintiffs do not bring and expressly disavow any claims under the Second Amendment or under any other provision of the U.S. Constitution or federal law, discussion of federal authorities is appropriate because "the Court cannot examine Article I, Section 13, of the Constitution of Virginia, and the constitutionality of [the Challenged Statutes] in a vacuum." *Stickley*, 110 Va. Cir. at 318; *see also Lynchburg Range & Training v. Northam*, 455 F. Supp. 3d 238, 248 (W.D. Va. 2020) (no removal jurisdiction for an Article I, Section 13 challenge).

As the 1969 Virginia Commission on Constitutional Revision recognized:

> most of the provisions of the Virginia Bill of Rights hav[ing] their parallel in the Federal Bill of Rights is … no good reason not to look first to Virginia's Constitution for the safeguards of the fundamental rights of Virginians. The Commission believes that the Virginia Bill of Rights should be a living and operating instrument of government and should, by stating the basic safeguards of the people's liberties, minimize the occasion for Virginians to resort to the Federal Constitution and the federal courts. [*Report of the Commission on Constitutional Revision* at 86 (1969); *see also Richmond Newspapers, Inc. v. Commonwealth*, 222 Va. 574 (1981).]

Consequently, Article I, Section 13 provides a distinct and independent basis for the protection of individual rights without resort to federal law. And although Article I, Section 13 may provide even stronger protection than the U.S. Constitution, it must, at a minimum, protect rights on a coextensive basis.

Indeed, based on the textual similarity between Article I, Section 13 and the Second Amendment's operative clause, as well as the 1971 General Assembly's well-documented legislative intent in amending it, Article I, Section 13 "cannot provide fewer rights than the rights inherent under the Second Amendment." *Stickley*, 110 Va. Cir. at 316, 317; *see also DiGiacinto v. Rector & Visitors of George Mason Univ.*, 281 Va. 127, 134 (2011); *Elhert v. Settle*, 105 Va. Cir. 326, 330 (Lynchburg 2020) ("No party disputes that *Heller* and *McDonald* should provide the framework for analyzing the present case. … [T]he Court finds *Heller* and *McDonald* to be highly persuasive in evaluating Virginia's constitutional right to keep and bear arms.").

Notably, another Virginia Circuit Court – the *Stickley* court – already has performed an extensive analysis of Article I, Section 13, its appropriate standard of review, and its application to a City of Winchester firearm ordinance passed pursuant to state law. *Stickley*, 110 Va. Cir. at 314; *see also Elhert*, 105 Va. Cir. at 329 (this Court previously performing an extensive analysis and concluding "Article I, § 13 should be interpreted with a history-and-tradition framework"). In

granting a preliminary injunction against portions of the Winchester ordinance, the *Stickley* court held that 1) Article I, Section 13 is at least coextensive with the Second Amendment based on its text and history; 2) the Second Amendment's textual and historical standard of review applies to Article I, Section 13 challenges; and 3) under that standard of review, the prohibition of firearms in public places like parks and public events is unconstitutional. *Stickley*, 110 Va. Cir. at 318, 320, 325.

Because Article I, Section 13 is at least coextensive with the Second Amendment, the baseline constitutional standard of review for Article I, Section 13 challenges is set forth in *District of Columbia v. Heller*, 554 U.S. 570 (2008), as reiterated and elaborated by *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022). *Stickley*, 110 Va. Cir. at 320; *see also Wilson v. Hanley*, 116 Va. Cir. 425, 431 (Lynchburg 2025) ("Under *Bruen*, any regulation affecting the right to bear arms must be rooted in the 'historical tradition of firearm regulation'...."). Beginning with *Heller*'s analysis, the Supreme Court has "expressly rejected the application of any judge-empowering interest-balancing inquiry that asks whether the statute burdens a protected interest in a way or to an extent that is out of proportion to the statute's salutary effects upon other important governmental interests," when it comes to the pre-existing right to keep and bear arms. *Bruen*, 597 U.S. at 22 (cleaned up); *see also McDonald v. City of Chicago*, 561 U.S. 742 (2010); *Caetano v. Massachusetts*, 577 U.S. 411 (2016) (per curiam). This categorical rejection of judicial interest balancing reflects the Framers' understanding that the pre-existing right to keep and bear arms "'is the very *product* of an interest balancing by the people' and it 'surely elevates above all other interests the right of law-abiding, responsible citizens....'" *Bruen*, 597 U.S. at 26. Indeed:

> [t]he very enumeration of the right takes out of the hands of government – even the Third Branch of Government – the power to decide on a case-by-case basis whether the right is really worth insisting upon. A constitutional guarantee subject to future

> judges' assessments of its usefulness is no constitutional guarantee at all. [*Heller*, 554 U.S. at 634.]

At bottom, *Bruen* "requires courts to assess whether modern firearms regulations are consistent with the … text and historical understanding" of the enumerated right to keep and bear arms, rather than engage in any interest-balancing or policy-laden analyses. *Bruen*, 597 U.S. at 26.

Under this framework, when the Constitution's "plain text covers an individual's conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation's historical tradition of firearm regulation. Only then may a court conclude that the individual's conduct falls outside the Second Amendment's [and Article I, Section 13's] 'unqualified command.'" *Bruen*, 597 U.S. at 24. In other words, if Plaintiffs' "proposed course of conduct" falls within the obvious scope of Article I, Section 13's text, such conduct is *presumed* protected and the Challenged Statutes are *presumed* unconstitutional unless Defendant carries his burden of "affirmatively" proving otherwise by showing a broad and enduring historical tradition of similar regulation. *Bruen*, 597 U.S. at 32, 19.

As the Third Circuit recently recognized in striking down New Jersey's ban on "assault firearms," this textual analysis "is a straightforward inquiry." *ANJRPC, Inc. v. Att'y Gen. N.J.*, 183 F.4th 211, 254 (3d Cir. 2026) (Matey, J., concurring). Indeed, a firearm regulation is "presumptively unconstitutional" if it "place[s] any restrictions on either the 'keep[ing]' (*i.e.*, possession) or the 'bear[ing]' (*i.e.*, carrying) of arms." *Wolford v. Lopez*, 146 S. Ct. 2032, 2044, 2043 (2026).

Courts then move to the second step, and only then are purported historical analogues considered. When "'a challenged regulation addresses a general societal problem that has persisted since the 18th century,' our analysis at *Bruen*'s second step is 'fairly straightforward.' *Bruen*, 597 U.S. at 26. In such cases, the 'lack of a distinctly similar historical regulation addressing that

problem'; the enactment of regulations that 'addressed the societal problem … through materially different means'; or courts' rejection of analogous regulations on constitutional grounds are all 'relevant evidence that the challenged regulation is inconsistent with the Second Amendment.'" *ANJRPC*, 183 F.4th at 243. The Supreme Court made this clear in *Wolford*. Historical analogues come into play only after the threshold textual step is met. Indeed, "discussion of historical materials and precedents [is] out of place at *Bruen*'s first step. At that stage, as we have explained, the question is simply whether a challenged law falls within the Second Amendment's 'plain text.'" 146 S. Ct. at 2049.

Article I, Section 13's absolutist language "keep and bear arms" contains no limitation on *what* arms one may acquire or transfer. Rather, it unequivocally declares that the right "shall not be infringed." Accordingly, the right presumptively belongs to all "the people," presumptively protects "all instruments that constitute bearable arms," and presumptively covers all "lawful purposes." *Heller*, 554 U.S. at 581, 582, 624. Only if Defendant can conclusively demonstrate via historical tradition that those who originally ratified Article I, Section 13 never considered certain persons, arms, or activities to be within its protections in the first place can this Court conclude that Plaintiffs' "conduct falls outside [Article I, Section 13's] 'unqualified command.'" *Bruen*, 597 U.S. at 17. Otherwise, that which Article I, Section 13 protects, it protects absolutely.

2. Application of *Bruen*'s Framework.

Plaintiffs Boyer and Rousseau, together with other members and supporters of the Organizational Plaintiffs, are all law-abiding citizens, part of "the people," and wish to acquire and possess bearable arms for lawful purposes. They unquestionably satisfy *Bruen*'s first step, and so the Challenged Statutes are "presumptively unconstitutional." *Wolford*, 146 S. Ct. at 2044.

Indeed, handgun acquisition is nothing new, nor is the acquisition of so-called "assault firearms" or other firearms. Nor, for that matter, is the acquisition of firearms by 18-to-20-year-olds. Private sales of these firearms have occurred for centuries in Virginia, free from governmental interference. There exists no analogue to the Challenged Statutes, much less any which is relevantly similar or from the relevant historical period (*i.e.*, the Founding era). To the contrary, the very concepts that adults cannot buy commonly owned firearms, or cannot do so before receiving affirmative "pre-clearance" from the government, are thoroughly modern inventions. Thus, Defendant will be unable to produce relevant historical analogues to justify the Challenged Statutes.

A number of courts already have analyzed the operative constitutional text such that Plaintiffs, along with their activities outlined above, clearly enjoy a presumption of constitutional protection. For example, there is no question that "ordinary, law-abiding, adult citizens [] are part of 'the people'" under the plain text. *Bruen*, 597 U.S. at 31. Further, there is no question that Plaintiffs' proposed course of conduct – purchasing handguns, "assault firearms," and other firearms – falls squarely within the right to "keep and bear arms." *See United States v. Rahimi*, 602 U.S. 680, 689 (2024) (emphases added) ("*when a firearm regulation* is challenged … *the Government must show* that the restriction 'is consistent with the Nation's historical tradition of firearm regulation'"); *Luis v. United States*, 578 U.S. 5, 26 (2016) (Thomas, J., concurring in the judgment) ("Constitutional rights … implicitly protect those closely related acts necessary to their exercise."). And finally, Plaintiffs' desired "arms" – handguns, "assault firearms," and other firearms – undoubtedly qualify. *Bruen*, 597 U.S. at 32; *ANJRPC*, 183 F.4th at 239. Consequently, Defendant bears the heavy burden of proving that the Challenged Statutes' ban on the private purchase of handguns, "assault firearms," and other firearms by a certain disfavored class of "the

people" is "consistent with the … historical tradition of firearm regulation." *Bruen*, 597 U.S. at 24. He cannot meet that stringent test.

When conducting this Article I, Section 13 historical analysis, a number of methodological precepts bear emphasis. First, "when it comes to interpreting the Constitution, not all history is created equal." *Bruen*, 597 U.S. at 34. "Constitutional rights are enshrined with the scope they were understood to have *when the people adopted them*." *Id.* Accordingly, only historical evidence contemporaneous with the Founding era (*i.e.*, when Virginia first adopted its Declaration of Rights in 1776) is relevant in elucidating the scope of the right that Article I, Section 13's Framers protected. *See id.* at 35 ("[W]e must … guard against giving postenactment history more weight than it can rightly bear."); *id.* at 36 ("[T]o the extent later history contradicts what the text says, the text controls."); *id.* ("[P]ostratification adoption or acceptance of laws that are *inconsistent* with the original meaning of the constitutional text obviously cannot overcome or alter that text."); *id.* ("[B]ecause post-Civil War discussions of the right to keep and bear arms 'took place 75 years after the ratification of the Second Amendment, they do not provide as much insight into its original meaning as earlier sources.'"); *id.* at 37 (treating 19th-century evidence "as mere confirmation of what the Court thought had already been established"); *id.* ("[W]e 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."); *id.* at 66 n.28 ("We will not address any of the 20th-century historical evidence brought to bear.... As with … late-19th-century evidence, the 20th-century evidence … does not provide insight into the meaning of the Second Amendment when it contradicts earlier evidence."); *see also Espinoza v. Mont. Dep't of Revenue*, 591 U.S. 464, 482 (2020) (rejecting examples of 19th century-era laws even from "more than 30 States" as failing to "establish an early American tradition"). In other

words, pre- and post-enactment historical evidence can only serve a confirmatory role, and cannot in itself establish a tradition that never otherwise existed *at* ratification.

Moreover, the fact that Article I, Section 13 was amended in 1971 to include the Second Amendment's operative clause is inapposite and does not change the relevant time period for historical inquiry. *See Stickley*, 110 Va. Cir. at 322 (rejecting the argument that courts should "consider[] the historical tradition as it existed when the General Assembly amended Article I, Section 13"). As discussed *supra*, the General Assembly's "purpose [was] only to guarantee that which [wa]s already guaranteed [in the Second Amendment]," *id.* at 313, and the Second Amendment guarantees a "pre-existing" right that is immune to post-enactment contradictions. *Heller*, 554 U.S. at 592; *Bruen*, 597 U.S. at 35.

Plaintiffs are aware of only one post-*Bruen* Article I, Section 13 decision that rejected Founding-era primacy in favor of the public understanding as of 1971. This outlier court, *LaFave v. County of Fairfax*, 2023 Va. Cir. LEXIS 203 (Fairfax Cnty. June 23, 2023), held that "the operable period of history for purposes of the analysis that is required in this case should be 1971." *Id.* at *14. But while the *LaFave* court's choice of temporal focal point allegedly made a difference in that case, this Court "need not address this issue" here because "the public understanding of the right to keep and bear arms in both [1776] and [1971] was, for all relevant purposes, the same with respect to" purchases of handguns and semiautomatic rifles, as well as to transfers to adults 18-20 years old, the conduct at issue here. *Bruen*, 597 U.S. at 38.

Indeed, the Challenged Statutes first went into effect just this year, and Virginia's prior experiment in banning of private sales took effect only in 2020, before being enjoined in part and later struck down entirely by this Court. Prior to these purely modern enactments, adult Virginians always could (and did) freely purchase handguns, "assault firearms," and other firearms via

private, noncommercial transactions, free from government interference. The modern statutory scheme therefore is unprecedented, and postdates *even 1971* by decades. It cannot inform the public understanding of the Article I, Section 13 right in any time period.

Second, it is Defendant's burden – and his alone – to affirmatively prove that the Challenged Statutes comport with the original public understanding of the Article I, Section 13 right. *Bruen*, 597 U.S. at 60 ("Of course, we are not obliged to sift the historical materials for evidence to sustain [the] statute. That is respondents' burden."). Thus, if Defendant fails to prove a broad and enduring historical tradition justifying the Challenged Statutes, Plaintiffs are entitled to the relief they seek. *See id.* at 24 (emphasis added) (announcing that "*only*" when the government carries its burden "may a court conclude that the individual's conduct falls outside the Second Amendment's 'unqualified command'").

Third, in proffering historical evidence, Defendant must establish a widespread Founding-era tradition. *Bruen*, 597 U.S. at 24 (emphasis added) (contemplating a "historical *tradition* of firearm regulation"); *id.* at 30 (requiring "well-established and representative" history); *id.* at 65 (rejecting historical evidence from a mere handful of states as "outliers"). While the *Bruen* Court did not articulate just how much historical evidence constitutes a "tradition," this Court need not resolve that question because there is *no* relevant evidence – none – to support the Challenged Statutes. Defendant cannot possibly show the existence in Virginia of any relevant historical analogues to the Challenged Statutes, because none exist. Even if the Court indulged the questionable expansion of this search beyond Virginia's own historical record, Defendant would still come up woefully short in meeting his burden.

Fourth, temporal relevance is not the only consideration. As the Supreme Court recently explained while applying *Bruen* in *United States v. Rahimi*, 602 U.S. 680, 692 (2024), a challenged

regulation must be "consistent with the principles that underpin our regulatory tradition," and "[a] court must ascertain whether the new law is 'relevantly similar' to laws that our tradition is understood to permit...." Accordingly, both the "how and why" of purported historical analogues must align with the Challenged Statutes if they are to offer any support. *Bruen*, 597 U.S. at 29.[4] But even so, "when a challenged regulation addresses a general societal problem that has persisted since the 18th century, the lack of a distinctly similar historical regulation addressing that problem is relevant evidence that the challenged regulation is inconsistent with the Second Amendment." *Id.* at 26.

It can be expected that Defendant will argue that the "universal background check" law is defensible based upon "longstanding prohibitions on the possession of firearms by felons and the mentally ill" as announced in *Heller,* 554 U.S. at 626-27, and that this end of preventing dangerous persons from possessing firearms supposedly justifies the means in the form of the "universal background check" law. But this would be precisely the "means-ends" metric that *Bruen* spent most of its opening paragraphs emphatically rejecting and chastising lower courts for applying. It simply does not follow from historical bans on possession by certain narrow categories of dangerous persons that the government can require *all* persons wishing to *acquire* firearms to affirmatively 'prove their innocence' before doing so.

[4] For example, "a green truck and a green hat are relevantly similar if one's metric is 'things that are green.' They are not relevantly similar if the applicable metric is 'things you can wear.'" *Id.* (citation omitted). Accordingly, Defendant cannot cobble together a purported tradition of disparate laws that did *not* ban young adult Americans from purchasing firearms or imposing background checks on the private, noncommercial transfer of firearms. Thus, Founding-era prohibitions on firearm sales to noncitizen Indians – by way of example – have *nothing* to do with the Challenged Statutes here, nor do they address the same purported societal problems (*i.e.*, different "how" and "why").

Irrespective of whether the "why" prong of *Bruen* may be satisfied by this argument, there is zero historical support for the "how" prong to be found during the Founding era – or even in 1971, for that matter. At neither of these times, and at no place in America, much less Virginia, have there existed laws requiring that the public in general appear before some designated arbiter of their ability to acquire a firearm in order to prove that they are worthy of exercising that right. The closest that history ever came to an analogue were the antebellum "surety" laws discussed in *Bruen*, which "required certain individuals to post bond before carrying weapons in public … and they typically targeted only those threatening to do harm." *Bruen*, 597 U.S. at 55. These laws (1) applied to public carry and not mere acquisition and (2) were applicable only on a particularized basis to individuals who had already been found to be dangerous. The "how" similarity as required by *Bruen* is non-existent here, as the "universal background check" law targets and impacts *everyone*, not merely those who have been deemed dangerous.

Because Defendant cannot possibly bear his historical burden, the Challenged Statutes violate Article I, Section 13. Indeed, as this Court already held, "there is no … history or tradition supporting a restriction on adults 18 to 20 years of age" to purchase handguns. *Wilson v. Settle*, 2024 Va. Cir. LEXIS 612, at *9 (Lynchburg Dec. 17, 2024). For starters, "[i]n Virginia, the Code defines an adult as a person 18 years of age or older." *Wilson*, 2024 Va. Cir. LEXIS 612, at *9.[5] Thus, "[w]hile courts have long held that age-based restrictions on the sale of firearms with regard to *minors* is supported by history and tradition," *id.* (emphasis added), 18-to-20-year-old Virginians *are not minors* and therefore enjoy the full scope of constitutional rights. Indeed, under Virginia

[5] Moreover, Virginia law provides that "[t]he militia of the Commonwealth of Virginia shall consist of all able-bodied residents … who are at least 16 years of age...." Va. Code § 44-1. Thus, at minimum, Article I, Section 13's protection of the "militia, composed of the body of the people," must include this subset of adults.

law, those 18 to 20 years old may serve on juries (Va. Code § 8.01-337), vote (U.S. Const. amend. XXVI), hold public office (Va. Code § 24.2-500), and join the military,[6] where they are entrusted with a whole host of far deadlier weapons than the ones at issue here.

Nor is there any historical doubt that adults ages 18 to 20 enjoyed Second Amendment rights at the Founding and beyond. In fact, the Supreme Court already has surveyed this Founding-era historical tradition. In *United States v. Miller*, 307 U.S. 174 (1939), the Court collected representative state militia laws from Massachusetts, New York, and Virginia, enacted between 1784 and 1786, which required individuals as young as 16 periodically to train, in public, with firearms "provide[d] himself, at his own Expense." *Id.* at 181; *see also id.* at 180-82; *Heller*, 554 U.S. at 624 ("The traditional militia was formed from a pool of men bringing arms 'in common use at the time' for lawful purposes like self-defense."). Then, on May 8, 1792, just a few months after the Second Amendment was ratified, the Second Militia Act, 1 Stat. 271, provided that "every free able-bodied white male citizen … who is or shall be of age of eighteen years, and under the age of forty-five years (except as is herein after excepted) shall severally and respectively be enrolled in the militia."

Because the Second Amendment's prefatory militia clause "does not limit" the Amendment's operative "right of the people" clause, "but rather announces a purpose" that serves a "clarifying function," the Second Amendment must protect, at a minimum, those persons who belong to the "Militia." *Heller*, 554 U.S. at 577, 578. Otherwise, there would be no "link between the stated purpose and the command" of the operative clause. *Id.* at 577. Accordingly, as a matter of plain text, as confirmed by Founding-era history, the Second Amendment protects, *at a*

[6] *See* https://www.usa.gov/join-military.

minimum, 18-to-20-year-old adult Americans, a class of individuals who undoubtedly belonged to the "Militia" when the text was adopted.[7]

Even outside of the militia context, adults ages 18 to 20 retained the right to acquire, possess, and carry firearms at the Founding. As the Fifth Circuit recently observed, "[w]hile it may be true that eighteen-to-twenty-year-olds could not then serve on juries, firearm restrictions are notably absent from the government's list of founding-era age-limited civil and political rights." *Reese v. BATFE*, 127 F.4th 583, 591 (5th Cir. 2025). Thus, even though some Founding-era authorities labeled those under the age of 21 "infants," and legislatures certainly knew how to impose special restrictions on that age group, such legal minority status never reached firearms. To the contrary, "young individuals were expected to keep the peace rather than disturb it. And in addition to serving in the militia, eighteen-to-twenty-year-olds could be obliged to join the *posse comitatus* … and bring 'such arms or weapons as they have or can provide.'" *Id.* at 598 (citation omitted). Based on this indisputable historical record, the Fifth Circuit invalidated a federal prohibition on the commercial purchase of handguns by adults under the age of 21. *Id.* at 600.

Likewise, the Third Circuit recently held that a Pennsylvania restriction on 18-to-20-year-olds' public carry of handguns is not "consistent with the principles that underpin founding-era firearm regulations...." *Lara v. Comm'r Pa. State Police*, 125 F.4th 428, 445 (3d Cir. 2025); *see also Firearms Pol'y Coal., Inc. v. McCraw*, 623 F. Supp. 3d 740, 756 (N.D. Tex. 2022) (Texas "cannot sufficiently establish that a prohibition on law-abiding 18-to-20-year-olds carrying a

[7] Of course, although not relevant here, the Second Amendment naturally protects a greater scope of individuals than just those who comprise the "Militia," by virtue of its use of the more expansive term "the people" in its operative clause. *See Heller*, 554 U.S. at 580-81 (noting "the 'militia' in colonial America consisted of a subset of 'the people,'" and "strong[ly] presum[ing] that the Second Amendment right … belongs to all Americans"). Thus, "the people" includes octogenarians, even though they would not have been included in the "Militia." So too, it includes 18-to-20-year-olds, who clearly were.

handgun in public for self-defense is consistent with this Nation's historical tradition of firearm regulation.").

The Eighth Circuit has reached the same result. Invalidating a Minnesota ban on public carry of firearms by 18-to-20-year-olds, that court explained that "Minnesota cites common law evidence that (as minors) 18 to 20-year-olds did not have full rights. Minnesota, however, does not put forward common law analogues restricting the right to bear arms." *Worth v. Jacobson*, 108 F.4th 677, 695 (8th Cir. 2024). Indeed, there are no such analogues.

Even the nonbinding Eleventh Circuit, which upheld a restriction on firearm purchases by 18-to-20-year-olds, acknowledged the limitations of its holding. Unable to find a Founding-era firearm regulation restricting the Second Amendment rights of these young adults, the Eleventh Circuit pointed generally to Founding-era young adults' assumed "lack[]" of "cash and the capacity to contract"[8] as evidence of an inability to purchase firearms. *NRA v. Bondi*, 133 F.4th 1108, 1123 (11th Cir. 2025). Even so, the court freely acknowledged that "Founding-era laws required minors to carry arms," and it "assume[d] that the Second Amendment protects individuals under the age of 21" with respect to firearm-related conduct *other* than purchases. *Id.* at 1123, 1130.

Of course, to justify a *firearm* restriction, *Bruen* requires a historical tradition of *firearm* regulation (597 U.S. at 17, 24), not a tradition of economic data, contract law principles, and vague assumptions about Founding-era attitudes. The Eleventh Circuit's decision in *Bondi* conflicts with

[8] Of course, "[t]he members of the first Congress were ignorant of thermal heat imaging devices; with late teenage males, they were familiar." *NRA v. BATFE*, 714 F.3d 334, 342 (5th Cir. 2013) (Jones, J., dissenting from denial of rehearing en banc). Young adults have always "lacked cash" in comparison to their older counterparts, but that is no reason to deny them Article I, Section 13 rights.

the weight of authority to the contrary, and is unpersuasive because of that court's own admission that the Founders never restricted firearm rights of 18-to-20-year-old adults.[9]

More broadly, there is no historical tradition supporting the criminalization of private, noncommercial, intrastate transactions of firearms. By requiring private sellers and buyers to appear at a licensed dealer and submit to a background check (and therefore governmental documentation) for every single firearm transaction in the Commonwealth, the Challenged Statutes effectively create a system of universal firearm registration. But as then-Judge Kavanaugh observed in *Heller v. District of Columbia*, 670 F.3d 1244 (D.C. Cir. 2011), "[r]egistration of all lawfully possessed guns – as distinct from licensing of gun owners or mandatory record-keeping by gun sellers – has not traditionally been required in the United States and even today remains highly unusual. Under *Heller*'s history-and-tradition-based test, [such a] registration requirement is therefore unconstitutional." *Id.* at 1270 (Kavanaugh, J., dissenting). The Challenged Statutes are therefore unconstitutional in their entirety, and this Court should enjoin them as to all adult Virginians.

[9] The same is true for the Tenth Circuit's decision in *Rocky Mountain Gun Owners v. Polis*, 121 F.4th 96 (10th Cir. 2024). Although observing that "Pineda, who presents himself to be an ordinary, law-abiding citizen under the age of 21 – is part of 'the people' as defined by the Second Amendment," the Tenth Circuit ultimately upheld a Colorado restriction on firearm purchases by those under age 21. *Id.* at 116. But it did so not according to historical tradition, but rather a misplaced reliance on *Heller*'s dicta regarding "conditions and qualifications on the commercial sale of arms." *Id.* at 119. Rather than holding the government to its historical burden as *Bruen* required, the Tenth Circuit cited "academics" for the proposition that *Heller*'s passing discussion of laws assumed to have sufficient historical support when challenged *actually* created a "safe harbor" from the Second Amendment's very plain text. *Id.* at 119 n.5, 119-20. Thus, the Tenth Circuit engaged in no historical analysis of firearm regulations whatsoever, and the interest balancing it employed in its place violated *Bruen* several times over. In addition, the Tenth Circuit's opinion – explicitly applying to "commercial sales" – would not apply to the private, noncommercial conduct Plaintiffs wish to engage in here.

Finally, the Challenged Statutes are also unconstitutional as applied to all private transactions – not only those involving 18-to-20-year-olds, but also all those involving older adults. In *Heller*, the Supreme Court identified certain categories of firearm regulations that it believed might be sufficiently "longstanding" to survive historical analysis in a future case, "if and when" challenged. *Heller*, 554 U.S. at 626, 635. One of those categories was "laws imposing conditions and qualifications on the commercial sale of arms." *Id.* at 626-27. Since then, some courts have relied on that dicta to uphold certain firearm regulations as being regulations of commercial activity. *See, e.g.*, *Rigby v. Jennings*, 2026 U.S. Dist. LEXIS 204409, at *21 (D. Del. Sept. 10, 2026). But to the extent this Court is inclined to follow *Heller*'s dicta in lieu of *Bruen*'s methodology and the Supreme Court's most recent pronouncements[10] – such dicta can only reach *commercial* transactions. Indeed, *Heller* did not purport to reach all "sales," but rather only "commercial sale[s]," if anything indicating that the Court held a different presumption with respect to private, noncommercial sales. Thus, and at a minimum, even if this Court were to uphold the Challenged Statutes as "conditions and qualifications on the commercial sale of arms" by *licensed dealers*, it must strike the Challenged Statutes as to private, noncommercial, intrastate transactions of firearms.

C. While Plaintiffs Face Irreparable Harm, An Injunction Would Not Harm Defendant.

The balance of equities weighs in Plaintiffs' favor. Plaintiffs' state constitutional rights have been, are being, and will continue to be violated by the Challenged Statutes. In contrast, as

[10] Although the *Heller* Court initially described these sorts of firearm regulations as "presumptively lawful regulatory measures," 554 U.S. at 627 n.26, the Court subsequently clarified that "any restrictions on either the 'keep[ing]' (*i.e.*, possession) or the 'bear[ing]' (*i.e.*, carrying) of arms" are "presumptively unconstitutional." *Wolford*, 146 S. Ct. at 2043, 2044. After *Bruen*, and certainly now after *Wolford*, it is clear that *all* firearm regulations are subject to historical analysis.

law-abiding Virginians, the acquisition of handguns and semiautomatic rifles by Plaintiffs Boyer and Rousseau – conduct that has occurred lawfully for decades – will cause Defendant no harm whatsoever. *See, e.g.*, *Robar v. Vill. of Potsdam Bd. of Trs.*, 490 F. Supp. 3d 546, 574 (N.D.N.Y. 2020) ("The Government … 'does not have an interest in the enforcement of an unconstitutional law.'"); *Fraser v. BATFE*, 689 F. Supp. 3d 203, 214 (E.D. Va. 2023) ("any minimal hardship that may befall the Government from not being able to enforce the unconstitutional statute … must yield to that harm suffered by the individual whose constitutional rights are being denied"). Indeed, an injunction merely would preserve the status quo – one that has existed for all of Virginia's history. The conduct banned by the Challenged Statutes has been standard practice in Virginia since the 1600s. The sky will not fall if this Court were to simply pause the Challenged Statutes' effect, pending a final decision in this case. Indeed, this Court previously struck down one of the Challenged Statutes, without ill effect.

D. Protecting Constitutional Rights Is Always in the Public Interest.

Finally, the public interest supports the granting of an injunction, because it is always in the public interest that the government be prevented from infringing enumerated constitutional rights. *See Stickley*, 110 Va. Cir. at 327 (citation omitted) ("'[T]he public interest favors enjoining a constitutional violation.... [I]t is not adverse to the public interest to grant a preliminary injunction in order to preserve a constitutional right pending trial."); *Legend Night Club v. Miller*, 637 F.3d 291, 302-03 (4th Cir. 2011) ("Maryland is in no way harmed by issuance of an injunction that prevents the state from enforcing unconstitutional restrictions. … [U]pholding constitutional rights is in the public interest.").

CONCLUSION

For the foregoing reasons, Plaintiffs' Motion for Preliminary Injunction should be granted.

Respectfully submitted,

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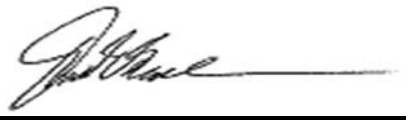
BY: 

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CERTIFICATE OF SERVICE

In accordance with Va. Code § 8.01-629, the undersigned certifies that, on October 29 2026, a true and accurate copy of the foregoing Memorandum in Support of Motion for Preliminary Injunction was emailed to the following:

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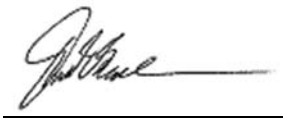

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