VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF LANCASTER

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

Plaintiffs,

v. **Case No. CL26000201-00**

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

Defendant.

PLAINTIFFS' RESPONSE TO BRIEF OF PROFESSOR A.E. DICK HOWARD AS *AMICUS CURIAE*

COME NOW Plaintiffs John Crump, Gun Owners of America, Inc. ("GOA"), Gun Owners Foundation ("GOF"), Virginia Citizens Defense League ("VCDL"), and Virginia Citizens Defense Foundation ("VCDF"), by counsel, and in response to the "Brief of Professor A.E. Dick Howard as *Amicus Curiae* in Support of Defendant and in Opposition to Plaintiffs' Motion for a Preliminary Injunction" ("Amicus") state the following:

ARGUMENT

Expectedly, Defendant will rely on (1) a June 18, 2026 denial (entered without any substantive analysis) of a motion for preliminary injunction against the Challenged Statutes in *Curtis v. Katz*, No. CL26-2454 (Spotsylvania Cir. Ct.), and (2) Professor Howard's *amicus* brief filed in this case, to claim that Article I, Section 13 of the Virginia Constitution does not protect an *individual* right to keep and bear arms, but rather merely the *Commonwealth's* right to maintain a

militia. In other words, according to Howard, Article I, Section 13 is some sort of unenforceable contract *with one's self*. But that sort of constitutional revisionism conflicts with the plain text and context, is undermined by the uncontroverted historical record, and has been repudiated by the U.S. Supreme Court, the Virginia Supreme Court, multiple Virginia circuit courts, and the people of Virginia. Nor has Professor Howard always believed his claim that the Second Amendment and Article I, Section 13 mean different things, having previously filed a 2020 *amicus* brief explaining – in all caps – that "THE RIGHTS PROTECTED BY ARTICLE I, § 13 OF THE CONSTITUTION OF VIRGINIA ARE THE SAME AS THE RIGHTS PROTECTED BY THE SECOND AMENDMENT."[1]

This Court should reject Howard's request to judicially nullify the popular enumeration of an individual right,[2] and it should grant Plaintiffs' Motion and preliminarily enjoin enforcement of the Commonwealth's unprecedented and looming gun ban.

I. The *Curtis* Case Is Distinguishable, and the *Curtis* Opinion Contained No Analysis and Is Unpersuasive Here.

At the outset, Plaintiffs note that the Circuit Court for Spotsylvania County recently denied a motion for preliminary injunction against enforcement of the Challenged Statutes in *Curtis v. Katz*, No. CL26-2454. The *Curtis* case involves a challenge based on the militia clause of Article I, Section 13, making it readily distinguishable from Plaintiffs' challenge here, which relies on

[1] Brief *Amici Curiae* on Behalf of Constitutional Law Professors A.E. Dick Howard, Russell A. Miller, and Carl W. Tobias at 5, *Lynchburg Range & Training, LLC v. Northam*, No. CL20000333-00 (Lynchburg Cir. Ct. Apr. 13, 2020). Curiously, in 2020, Professor Howard urged interpretive parity with the Second Amendment when the federal standard was "judge-empowering interest balancing." *See N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 22 (2022). But now, after the Supreme Court rejected that approach in *Bruen*, Professor Howard urges *no* parity.

[2] Consistent with Defendant's "off-the-shelf briefing" (Plaintiffs' Reply at 2), Defendant now dusts off Howard's shopworn *amicus* brief, which was previously submitted with few alterations in *Va. Citizens Def. League v. City of Roanoke*, No. CL24-74 (Roanoke Cir. Ct. May 24, 2024).

Article I, Section 13 in its entirety – including its straightforward proclamation that "the right of the people to keep and bear arms shall not be infringed." No doubt, Defendant Katz will ask this Court to replicate that ruling here, turning one outlier court into two. But the *Curtis* decision is entirely unpersuasive. Indeed, that court simply stated that it "is *currently persuaded* that both the history and practice surrounding Sec. 13 establish no individual right to possess military style weapons *by members of the unorganized militia*." Letter Ruling at 6 (emphases added).[3] That was the extent of the court's legal analysis on the matter, and at no point did the court engage with the *Curtis* plaintiffs' arguments. It is hardly persuasive that another court "is currently persuaded" by something – especially for no articulable reason. To the extent that *Curtis* is read any more broadly, it stands alone in a vast and otherwise unanimous sea of jurisprudence from both Virginia and federal courts that hold that the enumerated right to keep and bear arms is an unequivocally *individual* right.

II. Howard's Amicus Is Replete with Factual and Legal Omissions, Along with Historical Errors.

In support of Defendant, Howard offers the Court his personal and political opinions on the meaning of Article I, Section 13. Self-describing "as the preeminent expert on the Constitution of Virginia," Howard asserts that he is "uniquely qualified" to interpret the Virginia Constitution, on the theory that he was "'present at the creation' of the Constitution of 1971." Amicus at 1-2; *see also id.* at 2 (claiming he "was literally 'in the room'"). But despite his current recollections of some involvement in the activities of the Commission on Constitutional Revision, Howard's brief is replete with factual and legal omissions, along with historical errors.

[3] https://www.ammoland.com/wp-content/uploads/2026/06/1052923479-Curtis-v-Katz-PI-Order-Ltr-Opinion.pdf.

First, Howard begins by incorrectly asserting that, "[f]or nearly two centuries after the 1776 Declaration of Rights, drafted by George Mason, the Constitution of Virginia contained no provision protecting or otherwise referencing any right to keep and bear arms." Amicus at 3. But that ignores that Article I, Section 13 has protected "the body of the people, trained to arms"[4] *since 1776*. How this centuries-old protection – contained in a "Declaration *of Rights*" – fails to so much as "*referenc*[*e*]" the pre-existing right to keep and bear *arms*, Howard does not say. Indeed, as detailed below, a plethora of authorities confirm that this language was always intended to protect a pre-existing, individual right.

Second, Howard claims that Article I, Section 13 should be interpreted entirely differently than the Second Amendment. Amicus at 3; *see also id.* at 8-9 ("[t]he unique text and structure of Article I, § 13 render inapt the textual analysis of the Second Amendment"). But this is not Professor Howard's first *amicus* brief in which he has offered his view of the right to bear arms in Virginia, and his prior briefing demonstrates a pattern of interpretive inconsistency – taking whatever position is necessary to support restrictions on Virginians' gun rights.

For example, prior to the U.S. Supreme Court's decision in *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1, 22 (2022), which rejected the "judge-empowering" interest-balancing test widely used in the federal circuits, Howard filed an *amicus* brief *urging adoption* of Second Amendment caselaw for Article I, Section 13 challenges. As he theorized, "the rights protected by Article I, § 13 of the Constitution of Virginia *are the same* as the rights protected by the Second Amendment." *See* Brief *Amici Curiae* on Behalf of Constitutional Law Professors A.E. Dick

[4] "That a well-regulated militia, composed of the body of the people, trained to arms, is the proper, natural, and safe defence of a free State; that standing armies, in time of peace, should be avoided, as dangerous to liberty; and that in all cases the military should be under strict subordination to, and governed by, the civil power."

Howard, Russell A. Miller, and Carl W. Tobias ("Howard 2020 Br.") at 5, *Lynchburg Range & Training, LLC v. Northam*, No. CL20000333-00 (Lynchburg Cir. Ct. Apr. 13, 2020) (emphasis added); *see also* 1 A.E. Dick Howard, Commentaries on the Constitution of Virginia 274 (1974) (emphasis added) ("[t]he guarantees inhering in the first part of section 13, dealing with the right of the citizenry to bear arms in their own defense, are *substantially identical to the rights founded in the Second Amendment.*").

Of course, after *Bruen* was decided, Second Amendment caselaw is no longer to Howard's liking, and so he suddenly now purports to find "unique features of Article I, § 13" that allegedly "undermine the case for applying the same analysis that the U.S. Supreme Court employed [in *District of Columbia v. Heller*, 554 U.S. 570 (2008)]." Amicus at 9.

Howard's view of governing Virginia precedents has also shifted diametrically. Whereas in 2020 he argued that "*the Supreme Court of Virginia [has] conclusively held* [in *DiGiacinto v. Rector & Visitors of George Mason Univ.*, 281 Va. 127 (2011),] that Article I, § 13 is coextensive with the federal Constitution" (Howard 2020 Br. at 10 (emphasis added)), Howard now claims that *DiGiacinto* involved only "*one specific circumstance*" and that the broader question remains open. Amicus at 9 (emphasis added). In fact, the Virginia Supreme Court in *DiGiacinto* adopted Howard's prior view, finding that, "[a]s noted by Professor Howard, the Virginia General Assembly incorporated the specific language of the Second Amendment … into the existing framework of Article I, § 13.... As a result, the language in Article I, § 13 concerning the right to bear arms is 'substantially identical to the rights founded in the Second Amendment.'" *DiGiacinto v. Rector & Visitors of George Mason Univ.*, 281 Va. 127, 133-34 (2011).

Of course, adopting Howard's view now requires hitting a moving target. His "preeminent expert" opinion appears to be designed simply to reach whatever anti-gun result is desired. But as

the Virginia Supreme Court has explained, "[n]o one should be permitted, in the language of the vernacular, to talk through both sides of his mouth. Doing so in the judicial context is thought to be 'playing fast and loose' with the courts, or 'blowing hot and cold' depending on perceived self-interest." *Wooten v. Bank of Am., N.A.*, 290 Va. 306, 310 (2015) (footnote and citations omitted). Not even "preeminent" constitutional professors.

Third, Howard focuses on the placement of Virginia's right to keep and bear arms within Article I, Section 13, which he claims is "dealing with militia service." Amicus at 6; *see also id.* at 8. From this, Howard deduces, "the right to keep and bear arms" is "tether[ed] … to service in the state militia." *Id.* at 4. But for starters, the placement of this operative language proves nothing. Howard's theory is based on the presupposition that, prior to 1971, Article I, Section 13 protected only a militia right – and thus additional language must only confirm that militia focus. Of course, if one presupposes the opposite – that Article I, Section 13 protected an *individual* right all along – then the additional language would only confirm the *individual* focus. In reality, placement of the additional language shows only that the substantive provision was not meant to be altered one way or the other. *See* Amicus at 19 ("the legislators repeatedly emphasized that the addition would not alter the then-existing guarantees of Article I, § 13").

More fundamentally, Howard focuses myopically only on the title of Article I, Section 13 – "Militia; standing armies; military subordinate to civil power." But he misses the forest for the trees. The Virginia Bill of Rights identifies – *right up front and in no uncertain terms* – by whom it is made and those whose rights it protects. It is identified as "A DECLARATION OF RIGHTS *made by the good people of Virginia*," and declares that its "*rights do pertain to them* and their posterity" – *i.e.*, they are "rights … [of] the good people of Virginia." (emphasis added). There can thus be no argument that Article I, Section 13's rights "pertain to" a government militia – the

Bill of Rights says otherwise. This reality is confirmed by the plain text of Article I, Section 13, which defines the "militia" as "the body of the people, trained to arms."[5] Thus, one need not make inferences about which group is being protected – the Bill of Rights states so, repeatedly and expressly.[6]

Fourth, Howard claims that the 1776 Virginia Constitution omitted "any reference to the right to keep and bear arms," and "[t]his was no accident." Amicus at 5. As Howard tells it, Jefferson's individual-rights proposal was "rejected" and "did not make it into the final Declaration." *Id.*; *see also id.* at 6 (citing *Heller* for Jefferson's "'unsuccessful' attempt"). But in fact, *Heller* explicitly rejected this very claim, explaining that "[t]here is no evidence that the drafters regarded the Mason proposal as a substitute for the Jefferson proposal." *Heller*, 554 U.S. at 602 n.18. In other words, according to the Court, although using different language, both Jefferson's and Mason's proposals were intended to protect individual rights. This Court should decline Howard's invitation to overrule the U.S. Supreme Court on this issue.

Fifth, Howard claims that Article I, Section 13's "use of 'therefore' explicitly connects the right to keep and bear arms to the militia...." Amicus at 7. But Plaintiffs already have addressed

---

[5] Virginia law explicitly confirms this reading: "The militia of the Commonwealth of Virginia shall consist of all able-bodied residents of the Commonwealth who are citizens of the United States and all other able-bodied persons resident in the Commonwealth who have declared their intention to become citizens of the United States...." Va. Code § 44-1; *see also id.* § 44-4 ("The unorganized militia shall consist of all able-bodied persons as set out in § 44-1.").

[6] Nor does Howard ever explain how the term "the people" in Article I, Section 13 magically has some different meaning than the other eight times it appears in the Bill of Rights. *See, e.g.*, Va. Const. art. I, § 12 ("the right of the people peaceably to assemble"); art. I, § 16 (Establishment Clause referencing "the people of any district within this Commonwealth"). To the contrary, "[a] word or phrase is presumed to bear the same meaning throughout a text; a material variation in terms suggests a variation in meaning." Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 170 (2012). The same principle applies to the variation in Article I, Section 13's use of the words "militia" *and* "people" in the same text. If Article I, Section 13 codified only a militia right, it would have been unnecessary to use any word other than "militia."

this issue in their Reply (at 12-13). As the Supreme Court has explained, "[t]he [Second] Amendment could be rephrased, '*Because* a well regulated Militia is necessary to the security of a free State, the right of the people to keep and bear Arms shall not be infringed.'" *Heller*, 554 U.S. at 577 (emphasis added). So whether one trades a "because" at the beginning for a "therefore" in the middle, the prefatory and operative clauses of the federal and state provisions clearly mean exactly the same thing.

Sixth, Howard offers up a cornucopia of citations to legislative history which he claims "provide[s] critical insight" into the meaning of Article I, Section 13.[7] Amicus at 11-15. Generally, Howard claims, the 1971 Amendment debates "show that the legislators were concerned with preserving the power of the Commonwealth to enact gun-control measures." *Id.* at 12. But that is a *non sequitur* – a focus on the permissible scope of gun control does not mean the legislators viewed the right to keep and bear arms as a collective, militia right. To the contrary, as explained in more detail below, significant legislative history shows that the overwhelming consensus in 1971 was that Article I, Section 13 protected – and would still protect – an individual right. Indeed, as Senator Barnes, proponent of the 1971 Amendment, explained at the time, "[c]ertainly, one of the chief guarantees for freedom under any government, no matter how popular and respected, is the right of *the citizen* to keep and bear arms."[8]

---

[7] For starters, Howard cannot decide which side he is on when it comes to legislative history. Initially, he claims that the text is all that matters. Amicus at 4 (theorizing that courts are bound not by what "framers … might have meant to say, but … by what they did say"). But then, apparently recognizing that the text does not support his view, Howard later claims that "legislative history is a proper subject of the Court's attention." *Id.* at 11. Of course, even if "legislative history" was relevant, most of Howard's focus is on *what the General Assembly meant* when it was drafting the relevant language, not *what the voters thought it meant* when they ratified it. It is therefore entirely unclear what basis this Court has for moving beyond the plain text itself, which is not ambiguous in its protection of an individual right.

[8] Proceedings and Debates of the Senate of Virginia Pertaining to Amendment of the Constitution 392 (1969) (emphasis added).

Seventh, Howard claims that, when "the right of the people to keep and bear arms" was added to Article I, Section 13 in 1971, "the *settled judicial interpretation* of the Second Amendment was that it established a collective right bound up with militia service." Amicus at 16 (emphasis added). Not so. For starters, not even Howard believes that. As he previously explained in his Commentaries, although some thought the right to be collective, "arguments have been advanced to the contrary and some state courts have interpreted similar provisions as creating an individual right...." 1 Commentaries 277.

Likewise, others who were present during the constitutional revision debates perceived "no consensus on the issue of whether the proposed amendment to Article I, Section 13 provided a collective right to bear arms, as opposed to an individual right," and observed no "legislator arguing that the amendment was intended to reinforce the role of militias." Affidavit of Patrick McSweeney (Exhibit "A"); *see also* Affidavit of George S. Knight (Exhibit "B") ("As commonly understood in the 1969-1970 period by members of the general public of Virginia, 'the right of the people to keep and bear arms' expresses a personal right of private individuals....").

Undaunted, Howard goes on to claim that the Supreme Court's 1939 decision in *United States v. Miller*, 307 U.S. 174 (1939), was a "collective rights" decision. Amicus at 16. But the Court never made such a finding, and *Heller* certainly never purported to overrule *Miller*. Indeed, had *Miller*, as Howard claims, found the Second Amendment to protect only a collective right, then *Heller* certainly would have expressly overruled it. *See also United States v. Reyna*, 165 F.4th 1056, 1060 (7th Cir. 2026) ("the *Heller* majority explained that *Miller* was a narrow decision that did not address the nature of the right at all").[9]

[9] In fact, *Miller* itself noted, while discussing the role of the militia, that "when called for service these men were expected *to appear bearing arms supplied by themselves* and of the kind in common use at the time." *Miller*, 307 U.S. at 179 (emphasis added). It would make little sense

Nor had the federal circuits adopted the "collective rights" theory by the time the Article I, Section 13 amendment was ratified in 1971.[10] In fact, the first federal appellate cases finding a collective right did not arise until after the 1969-1970 debates had long concluded, and even after ratification had occurred at the November 3, 1970 election. *See, e.g.*, *Stevens v. United States*, 440 F.2d 144, 149 (6th Cir. 1971) ("the Second Amendment right 'to keep and bear Arms' applies only to the right of the State to maintain a militia and not to the individual's right to bear arms"); *United States v. Oakes*, 564 F.2d 384, 387 (10th Cir. 1977) ("[t]he purpose of the second amendment as stated by the Supreme Court in *United States v. Miller* … was to preserve the effectiveness and assure the continuation of the state militia"). So there was hardly a "settled judicial interpretation" around collective rights at the time the 1971 Amendments were being debated.

Quite to the contrary, the Virginia General Assembly maintained a definitively *individual*-rights view in the years preceding the 1971 Amendments. Expressly rejecting invitations to infringe the right to keep and bear arms, the General Assembly passed a resolution in 1964 "[c]oncerning the inherent right *of citizens* of this Commonwealth to own and bear arms," which discussed "*the individual's* right to bear arms," and the historical tradition where "only slaves were

---

for Article I, Section 13 to protect a collective right of a militia that was reliant on civilian ownership of arms *if such civilian ownership of arms is itself unprotected*. For this reason, "[c]onstitutional rights thus implicitly protect those closely related acts necessary to their exercise … and unavoidably connected with a right...." *Luis v. United States*, 578 U.S. 5, 26 (2016) (Thomas, J., concurring in the judgment) (emphasis added) (cleaned up); *see also* Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 16 (2012) (emphasis added) ("Textualism, in its purest form, begins and ends with what the text says *and fairly implies*."). Thus, Virginia's 1776 militia right necessarily protected those ancillary and predicate acts inherent to its exercise – *i.e.*, the individual, private ownership and carrying of arms.

[10] The 1976 state court case Howard cites is irrelevant, as the Massachusetts court merely interpreted its own state constitutional provision. *Commonwealth v. Davis*, 343 N.E.2d 847, 849 (Ma. 1976) ("Provisions *like art. 17* were not directed to guaranteeing individual ownership or possession of weapons").

forbidden by law to carry weapons."[11] As the 1964 resolution put it, the right to keep and bear arms "is an inalienable part of *our citizens'* heritage in this State," which does not allow any locality to "prohibit the purchase or possession of firearms by *any citizen* of good standing for the purpose of personal defense...." *Id.* at 251 (emphasis added). *That* was the General Assembly's view of Article I, Section 13 contemporaneously with its adoption of the 1971 Amendments – not the revisionist "collective rights" view Howard offers.[12]

But even if *everyone involved* had misinterpreted the Second Amendment right in 1971 and intended *only* to protect a collective right, the text of Article I, Section 13 still controls. Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 56 (2012) ("The words of a governing text are of paramount concern, and what they convey, in their context, is what the text means. … [T]he purpose must be derived from the text, not from extrinsic sources such as legislative history or an assumption about the legal drafter's desires."); *In re Hedrick*, 524 F.3d 1175, 1188 (11th Cir. 2008) ("[w]e interpret and apply statutes, not [legislative] purposes").[13] And

[11] Journal of the Senate of Virginia 250-51 (1964), https://tinyurl.com/4vbpzvbf. Indeed, Virginia's 1819 Code provided that "[n]o free negro or mulatto, shall be suffered to keep or carry any fire-lock of any kind, any military weapon, or any powder or lead, without first obtaining a license...." In other words, *everyone else* was permitted to have "any military weapon."

[12] The collectivist view ultimately was a minority view, even in 1971. The "only dissenter was Senator Harry E. Howell, Jr., who thought that the militia should be confined to the National Guard and that constitutional protection of the right of the people to keep and bear arms should not be recognized." Stephen P. Halbrook, *The Right to Bear Arms in the Virginia Constitution and the Second Amendment: Historical Development and Precedent in Virginia and the Fourth Circuit*, 8 Liberty U. L. Rev. 619, 628 (2014) (citing Proceedings and Debates of the Senate of Virginia Pertaining to Amendment of the Constitution, Extra Session 1969/1970, at 391 (1970)).

[13] *See also Conroy v. Aniskoff*, 507 U.S. 511, 519 (1993) (Scalia, J., concurring in the judgment) ("We are governed by laws, not by the intentions of legislators."); *FS Credit Opportunities Corp. v. Saba Cap. Master Fund, Ltd.*, 2026 U.S. LEXIS 2466, at *17 n.5 (June 11, 2026) ("Put differently: The judicial task is to read words, not minds."); *FS Credit Opportunities Corp.*, 2026 U.S. LEXIS 2466, at *20 ("interpretation must be driven by 'analysis of the statute' rather than 'psychoanalysis of Congress'").

as *Heller* made clear, the text – "the right of the people to keep and bear arms" – has always and unambiguously protected an individual right.

Eighth, while Howard cites five newspapers that claimed Article I, Section 13's modernization did nothing to protect an individual right to arms (Amicus at 18-19), once again, he contradicts his own Commentaries, in which he explained that Article I, Section 13 "guarantees the right of all citizens to serve in the armed militia of the Commonwealth *and to bear arms in defense of their way of life*." 1 Commentaries 266 (emphasis added). If the provision protected only a communal right to a state militia, there would have been no need to describe the right to include more than that. Indeed, protecting only the right of a government-controlled "militia" to keep and bear arms is an utterly daft proposition, akin to enshrining the right of a navy to have boats, or the right of the cavalry to have horses. It is difficult to believe that this would have been the pointless intent of those who carefully crafted Virginia's Declaration of Rights, or the U.S. Constitution.

Ninth, Howard cites a 1993 Virginia Attorney General opinion that both the Second Amendment and Article I, Section 13 "'confer[red] only a collective right....'" Amicus at 17. But subsequent Attorneys General repudiated that view – a point Howard never acknowledges.[14]

III. The Virginia Supreme Court Already Has Held Article I, Section 13 to Be Co-Extensive with the Second Amendment's Individual Right, So this Court is Foreclosed from Adopting Howard's View that the Virginia Constitution Protect Only a Collective Militia Right.

[14] *See* Opinion from Att'y Gen. Judith W. Jagdmann to Hon. R. Creigh Deeds, No. 05-078, 2006 WL 304006, at *2 (Jan. 4, 2006) (emphasis added) ("The *right of a citizen* … to carry a concealed handgun *is considered universal* within the Commonwealth...."); *see also id.* (emphasis added) ("the rights guaranteed by … Article I, § 13, of the Constitution of Virginia … *protect all citizens*…."); Opinion of Att'y Gen. Kenneth T. Cuccinelli, II to Hon. Thomas A. "Tag" Greason, No. 10-009, 2010 WL 1129930 (Mar. 16, 2010).

The outlier Spotsylvania ruling in *Curtis* – and indeed, Professor Howard's underlying "collective rights" theory – are foreclosed by binding precedent. In *DiGiacinto v. Rector & Visitors of George Mason Univ.*, 281 Va. 127 (2011), the Virginia Supreme Court explained that "provisions of the Constitution of Virginia that are substantively similar to those in the United States Constitution will be afforded the same meaning." *Id.* at 134. Thus, the *DiGiacinto* Court expressly *held* – "[w]e hold" – that "the protection of the right to bear arms expressed in Article I, § 13 of the Constitution of Virginia is co-extensive with the rights provided by the Second Amendment of the United States Constitution, concerning all issues in the instant case." *Id.* at 134. Five points bear emphasis.

First, in holding Article I, Section 13 co-extensive with the Second Amendment, the Virginia Supreme Court virtually *copied and pasted* the Commonwealth's uncontroversial position in merits briefing, down to the same case citations. Indeed, as then-Attorney General Ken Cuccinelli had written in his briefing, "provisions of the Virginia Constitution that are substantively similar to those in the federal constitution will be afforded the same meaning. … *There is no reason to depart from this principle here. The right to bear arms language in the Virginia Constitution was derived from the Second Amendment and should be afforded the same construction.*" Brief of Appellees the Rector & Visitors of George Mason University at 9-10, No. 091934 (Va. May 20, 2010) (emphasis added). At the time *DiGiacinto* was argued and decided, no party believed Article I, Section 13 protected only a collective right – not even the Commonwealth. Only now does this new, rabidly anti-gun administration claim otherwise.

Second, this means that the Spotsylvania court ironically has rejected the very same argument that the *DiGiacinto* Court adopted, made by the very same former Attorney General that now represents the *Curtis* plaintiffs in the Spotsylvania litigation. And ultimately, the Virginia

Supreme Court's 2011 individual-rights holding binds this Court – not the divergent, unreasoned, and unpersuasive *Curtis* opinion.

Third, although the *DiGiacinto* Court noted that Article I, Section 13 and the Second Amendment were "co-extensive … concerning all issues in the instant case" (281 Va. at 134), and this case presents different factual issues (bans on popular firearms and magazines versus restrictions on public carry in "sensitive places"), the *DiGiacinto* holding repudiated the "collective rights" theory across the board. Indeed, it cannot be that Article I, Section 13 protected an individual right *solely for purposes of DiGiacinto*, but now protects *no individual right whatsoever* and only a *collective right* here. Ironically, Howard simultaneously boasts that the Virginia Supreme Court cited him as evidence of his supposed authority on the matter (Howard Motion ¶2), while insisting that the same Court was *completely wrong* in its conclusion (Amicus at 4).

Fourth, Article I, Section 13's protection of an individual right was uncontroversial among legal scholars at the time *DiGiacinto* was decided. Indeed, Eugene Volokh – who Howard cites elsewhere in his Amicus (at 8, 17) – contemporaneously reported that, under *DiGiacinto*, "[t]he Virginia provision … does protect an individual right to keep and bear arms in self-defense (something the Virginia courts had not yet held to that point)."[15] Professor Howard's new view on *DiGiacinto* is a radical and situationally driven outlier, not the consensus.[16]

---

[15] https://volokh.com/2011/01/13/virginia-supreme-court-upholds-ban-on-gun-possession-at-public-university/.

[16] *See also* 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").

Fifth, and relatedly, an overwhelming consensus of Virginia circuit courts following *DiGiacinto* have recognized that Article I, Section 13 protects an individual right. *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);[17] *Wilson v. Hanley*, 116 Va. Cir. 425 (Lynchburg 2025). The Spotsylvania ruling is definitionally an aberration – one that this Court should decline to follow.

IV. The U.S. Supreme Court Rejected the Revisionist "Collective Rights" Theory Nearly Two Decades Ago.

That Article I, Section 13 protects an individual right is hardly a novel conclusion – nor is it a modern theory, like Howard's collectivist one. Rather, the U.S. Supreme Court definitively laid the "collective rights" theory to rest in *District of Columbia v. Heller*, 554 U.S. 570 (2008), which recognized the historic, pre-existing, *individual* right to keep and bear arms that has always existed in this country. *Heller*'s individual-rights holding was rooted in the text, context, and historical understanding of this inherent right, and its analysis is worth repeating here.

A. The Second Amendment's Operative Clause and the Textual Context of "the People."

First, *Heller* rejected the fanciful notion that a constitutional protection of "the people" protects *no people* at all. Citing other references to "the people" throughout the federal constitutional text, *Heller* explained that "[a]ll … of these instances unambiguously refer to individual rights, not 'collective' rights, or rights that may be exercised only through participation

[17] Notably, even the *LaFave* court – which upheld a gun control ordinance – forcefully repudiated Defendant's "collective rights" theory. Indeed, "[a]n examination of the legislative history surrounding the enactment of Article 1 Section 13 makes clear that the Virginia General Assembly meant for the plain text of Article 1 Section 13 to incorporate the right to bear arms in the Virginia Constitution, and that said right was to cover individual conduct, and not as the defendant suggests, a mere militia right." *LaFave*, 2023 Va. Cir. LEXIS 203, at *12.

in some corporate body." *Heller*, 554 U.S. at 579. There is no reason to treat Article I, Section 13's protection of "the people" any differently.

B. The Second Amendment's Prefatory Clause and the Pre-Existence of the Militia.

Second, *Heller* observed that, "[u]nlike armies and navies, which Congress is given the power to create … the militia is assumed by Article I already to be *in existence*. … This is fully consistent with the ordinary definition of the militia as all able-bodied men." *Heller*, 554 U.S. at 596. So too in Virginia – Article I, Section 13 presupposes the existence of a citizen's militia, which necessarily – because it does not rely on the government for its existence – must have access to privately owned arms.[18]

C. The Second Amendment's Prefatory Clause and the Meaning of a "Free State."

Third, *Heller* refuted the claim that a textual reference to a "free state" implied a right held by the *state itself*, and not its individual people. As *Heller* explained, "[t]he phrase 'security of a free State' meant 'security of a free polity,' not security of each of the several States.... '[T]he word "state" is used in various senses [and in] its most enlarged sense it means the people composing a particular nation or community.'" *Heller*, 554 U.S. at 597. Likewise, Article I, Section 13 recognizes that "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...." *Heller*'s analysis is fully applicable to Article I, Section 13.

D. The Historical Context of the Right to Keep and Bear Arms.

[18] Nor does the "collective rights" theory make any sense at the *state* level. Federally, Howard's theory at least had some logical appeal, despite being *wrong*, because the federal Constitution protects the people *and the states* against federal encroachment, and so a state's right to maintain its own militia to protect against a powerful, centralized government at least fits within that framework. But in the Virginia Constitution, who is a collective right protecting *the state* against? Why would a state need to protect the right of itself … against itself? Howard does not say.

Fourth, *Heller* explained that the Second Amendment merely codified an "ancient right of individuals to keep and bear arms.... It was understood across the political spectrum that the right helped to secure the ideal of a citizen militia, which might be necessary to oppose an oppressive military force if the constitutional order broke down." *Heller*, 554 U.S. at 599. Contrary to the 1970s-era revisionism of "collective rights" theorists, the public always understood the right to keep and bear arms to be an *individual* one.

E. Analogous State Constitutional Provisions and State Supreme Court Opinions.

Fifth, *Heller* found further support for a historical, individual right in various state constitutional provisions, which often expressly provided for the "defense of the state." But rather than indicating the codification of a collective right, *Heller* explained that the opposite was true. Indeed, "[m]any colonial statutes required individual arms bearing for public-safety reasons – such as the 1770 Georgia law that 'for the security and *defence of this province*' … required those men who qualified for militia duty individually 'to carry fire arms' 'to places of public worship.' … That broad public-safety understanding was the connotation given to the North Carolina right by that State's Supreme Court in 1843." *Heller*, 554 U.S. at 601. Likewise, "[t]he 1780 Massachusetts Constitution presented another variation on the theme: 'The people have a right to keep and to bear arms for the common defence....' Once again, if one gives narrow meaning to the phrase 'common defence' this can be thought to limit the right to the bearing of arms in a state-organized military force. *But once again the State's highest court thought otherwise.*" *Heller*, 554 U.S. at 601-02 (emphasis added, citation omitted). The militia clause of Article I, Section 13 is consistent with other state constitutional provisions that undoubtedly protect individual rights.

At bottom, by claiming that "[t]here was no contemporary understanding in 1971 that the collective right adopted in Article I, § 13 *would evolve* into an individual right" (Amicus at 16,

emphasis added), Howard requests that this Court effectively disregard the logic and persuasiveness of *Heller,* and all of its progeny decided since by both Virginia and federal courts. But the inherent right to keep and bear arms – whether codified in the Virginia or U.S. Constitution – never "evolve[d]" into an individual right. Rather, it always *was* one,[19] the personal viewpoints of modern academics notwithstanding. Indeed, "it has always been widely understood that the Second Amendment … codified a *pre-existing* right," one that is "not … granted by the Constitution. Neither is it in any manner dependent upon that instrument for its existence." *Heller*, 554 U.S. at 592; *United States v. Cruikshank*, 92 U.S. 542, 553 (1876). Properly understood, Article I, Section 13 and the Second Amendment merely codified the common law[20] – an individual right. *Heller* was no 'evolutionary' event – it merely clarified the original public meaning of the text, consistent with its early history.

V. Professor Howard's Theory Invites the Very Result Virginia Supreme Court Justice Stephen McCullough Has Urged to Avoid.

Denying interpretive parity with the Second Amendment, Professor Howard extols the virtues of Virginia courts' "obligation to interpret the Constitution of Virginia independently of the federal Constitution." Amicus at 9. In support, he cites a 2011 law review article by now-Justice McCullough, which argued that, "'as the fundamental law of Virginia, the Virginia Constitution should retain independent significance. The alternative … *risks giving short shrift to rights that*

[19] This understanding dates back to the English Bill of Rights, which "has long been understood to be the predecessor to our Second Amendment" and provided that "'the Subjects which are Protestants, may have Arms for their Defence suitable to their Conditions, and as allowed by Law.'" *Heller*, 554 U.S. at 593.

[20] Howard's collective-rights theory likewise violates the "Presumption Against Change in Common Law," which provides that a text "will be construed to alter the common law only when that disposition is clear." Scalia & Garner, *supra*, at 318. As *Heller* explained, the right to keep and bear arms was "widely understood" to be a pre-existing (*i.e.*, common law) right that the Framers simply codified, rather than created out of thin air. *Heller*, 554 U.S. at 592.

Virginians have enjoyed for over two centuries.'" *Id*. at 10 n.4 (emphasis added). Yet ironically, that "short shrift" is precisely what Professor Howard urges here – the erasure of an individual right from Virginia's Declaration of Rights, in favor of a collective right held by no one other than the government itself. Howard never squares his novel theory with the sources he cites.

VI. Professor Howard's Theory Would Have Been News to Early Virginians and Other Framers, Who Uniformly Understood the Right to Bear Arms to Be an Individual Right.

Nor would the Founders have considered Howard's collectivist view to be tolerable. Indeed, even Howard's Commentaries mention that, with respect to the Second Amendment, "[d]uring the debates over this Amendment, the question of whether a republican government could limit individual ownership of firearms does not seem to have arisen." 1 Commentaries 273. Of course, in an era when personal firearm ownership had been necessary to overthrow tyrannical rule (and to live on the frontier), the Founders would not have questioned the right of individuals to own firearms – it was a given.

The Founders' own writings are illuminating. Patrick Henry, for example, declared "the great object is[] that every man be armed."[21] The reason was obvious. James Madison explained that "the advantage of being armed, which the Americans possess over the people of almost every other nation," is that "[i]t may well be doubted whether a militia thus circumstanced could ever be conquered by … a proportion of regular troops."[22] Thus, George Mason observed that "disarm[ing] the people … was the best and most effectual way to enslave them."[23] These early Virginians understood that individual ownership of arms *deterred* the sorts of atrocities that

[21] Jonathan Elliot, Debates in the Several State Conventions on the Adoption of the Federal Constitution 386 (1836).

[22] The Federalist No. 46, at 296 (James Madison) (Clinton Rossiter ed., 1961).

[23] Elliot, *supra*, at 380.

governments have committed against civilian populations throughout all of history. One can only imagine what they would have said about the Commonwealth's present plans to *ban* Virginians' most popular firearms altogether, and then to *deny* the existence of an individual right altogether.

Of course, Henry, Madison, and Mason were no radicals – at least, not by American standards. Outside of Virginia, other Founders held precisely the same views. Tench Coxe of Pennsylvania, for example, wrote that "the people are confirmed … in their right to keep and bear their private arms."[24] And because "the whole body of the people are armed," Noah Webster of Connecticut believed that they would "constitute a force superior to any band of regular troops that can be, on any pretence, raised in the United States."[25]

This individual-rights understanding persisted well beyond the Founding. In 1818, U.S. Representative from Pennsylvania Adam Seybert wrote that "our constitution guarantees to every citizen the right 'to keep and bear arms'...."[26] In 1833, U.S. Supreme Court Justice Joseph Story observed in his treatise that "the right of the citizens to keep and bear arms has justly been considered[] as the palladium of the liberties of a republic...."[27] And in 1845, Massachusetts abolitionist Lysander Spooner explained that the Second Amendment "obviously recognize[s] the natural right of all men 'to keep and bear arms' for their personal defence; and prohibit both congress and the state governments from infringing the right of 'the people' – that is, of *any* of the people – to do so...."[28]

---

[24] Tench Coxe, *Remarks on the First Part of the Amendments to the Federal Constitution*, Phila. Fed. Gazette, June 18, 1789.

[25] Noah Webster, An Examination into the Leading Principles of the Federal Constitution Proposed by the Late Convention Held at Philadelphia 32 (1787).

[26] Adam Seybert, Statistical Annals 633 (1818).

[27] 3 Joseph Story, Commentaries on the Constitution of the United States § 1890 (1833).

[28] Lysander Spooner, The Unconstitutionality of Slavery 116 (1845).

These are not the words of people who believed the right to arms inhered *in governments*. This Court should repudiate Defendant's ahistorical "collective rights" theory and remind Professor Howard that this issue has long been settled. It is not up for debate now.

CONCLUSION

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

Respectfully submitted,

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

BY: 

COUNSEL

David G. Browne (VSB No. 65306)
Spiro & Browne, PLC
2400 Old Brick Road
Glen Allen, VA 23060
Telephone: 804-573-9220
Email: dbrowne@sblawva.com

Robert J. Olson (VSB No. 82488)
William J. Olson (VSB No. 15841)
William J. Olson, P.C.
370 Maple Avenue West, Suite 4
Vienna, VA 22180
Telephone: 703-356-5070
114 Creekside Lane
Winchester, VA 22602
Telephone: 540-450-8777
Email: wjo@mindspring.com

Oliver M. Krawczyk (VSB No. 99918)
Gilbert Ambler (VSB No. 94325)
Ambler Law Offices, LLC

210 South Braddock Street
Winchester, VA 22601
Telephone: 540-550-4236
Email: oliver@amblerlawoffices.com
Email: gilbert@amblerlawoffices.com

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

The undersigned certifies that, on June 23, 2026, a true and accurate copy of the foregoing filing was emailed to the following:

Calvin C. Brown
Assistant Attorney General
Office of the Attorney General
202 North 9th Street
Richmond, VA 23219
(804) 786-4933
Email: cbrown@oag.state.va.us

Trevor S. Cox
Hunton Andrews Kurth LLP
Riverfront Plaza, East Tower
951 East Byrd Street
Richmond, VA 23219
(804) 788-7221
Email: tcox@huntonak.com

David G. Browne

EXHIBIT A

AFFIDAVIT OF PATRICK M. McSWEENEY

Patrick M. McSweeney, having been duly sworn, states the following under penalty of perjury:

1. In June1968, I was appointed by the Commission on Constitutional Revision to serve as staff attorney to the Commission.

2. That Commission had been established pursuant to a resolution of the Virginia General Assembly to conduct a study of the Constitution of Virginia and to make recommendations for revision.

3. The work of the Commission was initially undertaken by its five subcommittees, which completed their studies and submitted their recommendations by the early fall of 1968.

4. I served until I took a clerkship with Judge Albert V. Bryan of the United States Court of Appeals for Fourth Circuit in September 1968.

5. Judge Bryan's son, Albert V. Bryan, Jr., was a Virginia circuit court judge at the time and chaired the Commission's Subcommittee on Local Government.

6. During my clerkship with Judge Bryan, I followed the consideration by the General Assembly of the Commission's Report during the 1969 special legislative session, which approved several ballot measures that contained separate amendments to the Constitution.

7. The ballot measures were resubmitted to the 1970 session of the General Assembly for reapproval, which declined to approve two of the ballot measures but reapproved the remaining measures, which were then submitted for a vote of the people of Virginia in November 1970.

8. After my clerkship with Judge Bryan, I had assumed a position in a Richmond law firm and was invited by the private organization formed to campaign for the ratification of the ballot measures to be voted on in November 1970 to assist in that effort.

9. I was invited to speak in favor of ratification by several private organizations.

10. At the 1969 special session of the General Assembly, I monitored the consideration of the various recommendations of the Commission, including the inclusion of the language of Article I, Section 13 that had been contained in all previous Virginia Constitutions.

11. Members of the General Assembly at that session inserted in the proposed ballot measure the language "the right of the people to keep and bear arms shall not be infringed." That language was taken from the Second Amendment to the United States Constitution, which provides: "A well regulated Militia, being necessary to the security of free State, the right of the people to keep and bear Arms, shall not be infringed."

12. Proponents of the insertion of the language contained in the Second Amendment and some legislators who supported incorporation of the right to bear arms language from the Second Amendment contended that the right of the people to defend themselves established an individual right in each individual to keep and use arms for defense of themselves and their families.

13. The consideration of the amendment to Article I, Section 13 proposed by members of the General Assembly, including during debates at the 1969 special session, involved discussion of the effect of the amendment on the ability legislative bodies to impose reasonable regulation of the possession and use of firearms.

14. Although I followed the proceedings of the 1969 and 1970 legislative sessions carefully, I am not aware of any legislator arguing that the amendment was intended to reinforce the role of militias.

15. During the public discussion of the proposed amendment to Article I, Section 13, some argued that the amendment would provide clarity that the right to keep and bear arms was an individual right.

16. Based on my observations of the proceedings of the Commission and of the General Assembly, there was no consensus on the issue of whether the proposed amendment to Article I, Section 13 provided a collective right to bear arms, as opposed to an individual right.

17. The stated intent of members of the General Assembly who spoke on the issue was to incorporate the same protection into the Constitution of Virginia by adoption of the proposed amendment that is assured to citizens of the United States by the Second Amendment to the United States Constitution.

Subscribed and sworn to before me this 17th day of June, 2024.

Notary Public

My commission expires 11/30/2027

NEYERE YOUNG
NOTARY PUBLIC
COMMONWEALTH OF VIRGINIA
MY COMMISSION EXPIRES NOV. 30, 2027
COMMISSION # 7055974

EXHIBIT B

AFFIDAVIT

I, GEORGE S. KNIGHT, hereby swear or affirm as follows:

1. My name is George S. Knight, and I reside at 7214 Regent Drive, Alexandria, Virginia 22307. I hold the J.D. and S.J.D. degrees and am a member of the Virginia State Bar.

2. I am one and the same person identified in The Constitution of Virginia: Report of the Commission on Constitutional Revision 507 (Charlottesville 1969) as follows: "[From] George S. Knight (Alexandria) [Subject] For a constitutional guarantee of the right to bear arms."

3. The amendment I proposed to the Commission was substantially identical to that enacted in Art. I, Section 13 of the Virginia Constitution of 1970, which guarantees that "the right of the people to keep and bear arms shall not be infringed. . . ." The intent and purpose of my amendment was to conform the Virginia Declaration of Rights to parallel more closely the guarantees of the federal Second Amendment.

4. As commonly understood in the 1969-1970 period by members of the general public in Virginia, "the right of the people to keep and bear arms" expresses a personal right of private individuals to keep firearms (including rifles, shotguns, pistols, and revolvers) and other commonly possessed arms in their homes, businesses, and other premises, and to bear or carry arms for lawful purposes, including defense of self, family, and the Commonwealth.

5. The right-to-bear-arms guarantee was supported by and adopted to protect the interests of sportsmen, hunters, and lawabiding persons in general from infringement of said right, "infringement" meaning registration of firearms, waiting periods to purchase firearms, any general prohibition on possession of firearms by lawabiding persons, and failure to issue permits to lawabiding persons to carry firearms not open to common observation for personal protection.

George S. Knight
GEORGE S. KNIGHT

Date: 2 October 1986

COMMONWEALTH of VIRGINIA
COUNTY of FAIRFAX, To-Wit:

Subscribed, Sworn, and Acknowleged before me, Nancy L. Cammarata, a Notary Public, in and for the aforesaid State and County, this 2nd day of October, 1986 by George S. Knight.

My Commission Expires July 4, 1989

My Commission Expires: _____

Nancy L. Cammarata
Notary Public