

**IN THE CIRCUIT COURT OF THE COUNTY OF SPOTSYLVANIA  
COMMONWEALTH OF VIRGINIA**

DUSTIN R. CURTIS, individually and in his capacity  
as a member of the Virginia Unorganized Militia;

W. MICHAEL WOOD, individually and in his capacity  
as a member of the Virginia Unorganized Militia;

BLAUSTEIN & REICH, INC, d/b/a BOB’S GUN SHOP  
a Virginia stock company and licensed firearms dealer; and

DANIEL HINKSON, individually and as sole owner of  
BE READY ENTERPRISES, LLC,  
A Virginia limited liability company

Plaintiffs,

v.

Case No. \_\_\_\_\_

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

G. RYAN MEHAFFEY, in his official capacity as  
Commonwealth’s Attorney of Spotsylvania County, Virginia; and

ROGER L. HARRIS, in his official capacity as  
Sheriff of Spotsylvania County, Virginia,

Defendants.

**COMPLAINT FOR DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF**

**INTRODUCTION**

There is in the Constitution of Virginia a guarantee so ancient, so foundational, and so plainly written that its force should require no elaboration. Article I, § 13 opens: "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." Those words—drafted by George Mason and adopted on June 12, 1776, before a shot had been fired at Bunker Hill and before the Declaration of Independence had been signed—constitute the militia clause of the Virginia Constitution. They are not a preamble. They are not a recital. They are operative constitutional text, continuously in force for two hundred and fifty years.

The breadth of that guarantee is remarkable. Article I, § 13 speaks of "the body of the people"—without qualification as to sex, age, or other condition. The Virginia Constitution thus embeds

the militia concept at its most expansive: not a narrow demographic slice, but the people themselves, armed and trained for the defense of the free state. George Mason, who authored these words, confirmed their sweep on June 4, 1788, at the Virginia Ratifying Convention: "I ask, Who are the militia? They consist now of the whole people, except a few public officers." 3 J. Elliot, *The Debates in the Several State Conventions on the Adoption of the Federal Constitution* 425 (2d ed. 1891) (available at: <https://www.loc.gov/resource/l1scdam.l1ed003/?sp=437&st=text>).

Virginia's implementing statutes, Va. Code §§ 44-1 and 44-4, faithfully carry forward this breadth, defining the unorganized militia to include every able-bodied citizen of the Commonwealth within the specified age range who is not a member of the organized militia—approximately four million Virginians.

Senate Bill 749 and House Bill 217 (2026 Regular Session of the Virginia General Assembly) (as of April 19, 2026, located at: <https://lis.virginia.gov/bill-details/20261/SB749> & <https://lis.virginia.gov/bill-details/20261/HB217>) (collectively, "the Act") became law on May 14, 2026. The Act will, effective July 1, 2026, prohibit the sale, purchase, importation, manufacture, and transfer of an entire class of semi-automatic centerfire firearms—weapons for civilian use that are most closely analogous to the standard service rifles and pistols issued to the Virginia National Guard and the active-duty forces of the United States military. The Act will simultaneously prohibit the sale, purchase, importation, and transfer of the standard-capacity detachable magazines used with those weapons. Both prohibitions are enforced with criminal penalties. See Va. Code. §§ 18.2-287.4:1(B), 18.2-308.2:2(F) (the "Firearms Ban"); § 18.2-309.1(A)-(C) (the "Magazine Ban").

Plaintiffs challenge these prohibitions principally under the militia clause of Article I, § 13 of the Constitution of Virginia—a provision whose independent operative force has never been squarely adjudicated by a Virginia court. Plaintiffs contend that the militia clause is not merely prefatory language but a self-executing constitutional command that independently prohibits the General Assembly from disarming the body of the people. The argument is fundamental: the militia clause guarantees the existence of a "well regulated militia, composed of the body of the people, trained to arms." That guarantee is self-executing. It necessarily presupposes that the body of the people may acquire and possess the arms with which they must be trained. The General Assembly cannot, consistent with that guarantee, prohibit the body of the people from acquiring the very weapons with which they must be prepared to serve as that militia.

Should this Court decline to recognize the militia clause as an independent source of constitutional authority, the historical analysis presented herein demonstrates with equal force that the Act cannot survive scrutiny under the individual right to keep and bear arms guaranteed by the balance of Article I, § 13. The militia clause defines the purpose and scope of that right. Under any analytical framework—whether the militia clause is treated as independently operative or as the definitional predicate for the individual right—the Act is unconstitutional

because it prohibits the body of the people from acquiring the very arms that the militia clause identifies as constitutionally essential.

The standard for identifying constitutionally protected militia arms follows from the text of Article I, § 13 itself. A "well regulated militia" must be effective. It must be "composed of the body of the people." It must be "trained to arms." And it must be capable of serving as "the proper, natural, and safe defense of a free state." These are not aspirational phrases; they are constitutional commands. The arms that the body of the people must possess are those suitable for militia service—arms whose nature and purpose make them capable of contributing to the common defense. In every era, this has meant the weapons that bear a functional relationship to those issued to the organized military forces of the Commonwealth and the nation. As Dr. Edwin Vieira, Jr. has documented, this is a fixed constitutional principle, not a matter of legislative grace: the arms suitable for militia service must be no less current and effective than those carried by the members of the regular armed forces, because a militia equipped with obsolete or inferior weapons cannot serve as the "proper, natural, and safe defense of a free state" that the Constitution demands. E. Vieira, Jr., *The Sword and Sovereignty: The Constitutional Principles of "the Militia of the several States"* 78 (2012). This standard finds direct support in *United States v. Miller*, 307 U.S. 174, 178 (1939), which held that the Second Amendment protects weapons bearing "some reasonable relationship to the preservation or efficiency of a well regulated militia" and those that are "part of ordinary military equipment" or "could contribute to the common defense." The *Miller* Court further observed that militia members were "expected to appear bearing arms supplied by themselves and of the kind in common use at the time." *Id.* at 179. The semi-automatic centerfire rifles and pistols, and the standard-capacity magazines banned by the Act are precisely such weapons: they are the civilian analogs of the standard service rifles issued to the Virginia National Guard and the active-duty armed forces of the United States. The General Assembly's implicit concession that law-enforcement officers need these very weapons (and are therefore exempted from the Act) only confirms the point.

Plaintiffs seek a declaratory judgment that the Act violates Article I, § 13 of the Constitution of Virginia, and both a preliminary and permanent injunction against its enforcement.

## **PARTIES**

### **A. Plaintiffs**

1. Plaintiff Dustin R. Curtis is an adult citizen of the Commonwealth of Virginia, residing in Spotsylvania County. He is thirty-seven (37) years of age, a citizen of the United States, and is free of any legal disability that would bar him from possessing firearms under state or federal law. He is therefore a member of the Virginia Unorganized Militia under Article I, § 13 of the Virginia Constitution and Virginia Code §§ 44-1 and 44-4. Mr. Curtis is the lawful owner of multiple semi-automatic centerfire rifles—including at least one AR-15-pattern rifle with a collapsible stock, a pistol grip, and a threaded barrel—and of detachable ammunition feeding

devices capable of holding more than fifteen rounds. These items fall within the Act's definition of "assault firearm" and within its prohibition on large-capacity magazines. Mr. Curtis uses them for home defense, recreational target shooting, and to maintain proficiency with weapons of the kind he would be expected to bring to militia service. The Act will prohibit him from acquiring additional such weapons or magazines after July 1, 2026, and will subject him to criminal liability for any transfer of the guns and magazines he already owns.

**2.** Plaintiff William Michael Wood is an adult citizen of the Commonwealth of Virginia, residing in Spotsylvania County. He is forty-three (43) years of age, a citizen of the United States, and is free of any legal disability barring him from possessing firearms. He is therefore a member of the Virginia Unorganized Militia. Mr. Wood does not currently own a semi-automatic centerfire rifle of the type covered by the Act but has made a definite decision to purchase one—along with standard-capacity detachable magazines—for the purposes of home defense and militia readiness. The Act will prohibit any licensed dealer from selling him such a weapon or magazine on or after July 1, 2026, directly infringing his constitutional right to acquire the weapons with which she is constitutionally entitled to be trained as a member of the unorganized militia.

**3.** Plaintiff Blaustein & Reich, Inc., d/b/a Bob's Gun Shop ("Bob's Gun Shop") is a Virginia stock company with its principal place of business in the city of Norfolk, Virginia. Bob's Gun Shop holds a federal firearms license (FFL) issued by the Bureau of Alcohol, Tobacco, Firearms and Explosives and is engaged in the lawful retail sale, transfer, and service of firearms and related accessories. A significant and substantial portion of its business (approximately 20-25%) involves the sale of semi-automatic centerfire rifles, pistols, and associated detachable magazines that the Act classifies as "assault firearms" and as banned large-capacity magazines. The Act will prohibit these sales and transfers entirely, causing severe and direct economic harm to Bob's Gun Shop and depriving Virginians in its service area of access to constitutionally protected militia weapons.

**4.** Plaintiff Daniel Hinkson is an adult citizen of the Commonwealth of Virginia, residing in Albemarle County. He is a certified firearms instructor holding credentials from the National Rifle Association for instruction related to both rifles and pistols, as well as being an NRA certified range safety officer. Mr. Hinkson also served in the United States Marine Corps, where he earned Expert Level (the highest level) for both rifle and pistol qualification every year for which he participated in qualification shooting. Through his business, Be Ready Enterprises, LLC, a Virginia limited liability company, he provides instruction in the safe and effective use of semi-automatic rifles and pistols to members of the general public—the overwhelming majority of whom are members of Virginia's unorganized militia. His curricula include defensive rifle courses and courses specifically oriented toward militia readiness and civil emergency preparedness. The Act will prohibit him from acquiring additional semi-automatic centerfire rifles for instructional use, will prohibit the transfer of such weapons to students, and will effectively deprive his students of the ability to acquire—and therefore to train with—the

weapons that the militia clause of Article I, § 13 guarantees they have the right to keep and with which they must be trained.

## **B. Defendants**

5. Defendant Colonel Jeffrey S. Katz is the Superintendent of the Virginia State Police, appointed by Governor Abigail Spanberger in January 2026, pursuant to Virginia Code § 52-2. He is sued solely in his official capacity. As Superintendent, Colonel Katz is the chief executive officer of the Virginia State Police and is charged with the administration and statewide enforcement of the criminal laws of the Commonwealth. Virginia Code § 52-1 et seq. The Virginia State Police is the primary agency responsible for statewide enforcement of the criminal provisions of the Act, and Colonel Katz therefore has a direct and substantial enforcement relationship with the challenged legislation.

6. Defendant G. Ryan Mehaffey is the Commonwealth's Attorney of the County of Spotsylvania, having taken office in January of 2024. He is sued solely in his official capacity. As Commonwealth's Attorney, Mr. Mehaffey is the chief prosecutorial officer of Spotsylvania County and is charged with the prosecution of criminal offenses committed within the County. Virginia Constitution, Art. VII, § 4; Va. Code § 15.2-1626 et seq. The Commonwealth Attorney's Office is the primary agency responsible for prosecution of the criminal provisions of the Act within Spotsylvania County, and Mr. Mehaffey therefore has a direct and substantial enforcement relationship with the challenged legislation.

7. Defendant Roger L. Harris is the Sheriff of the County of Spotsylvania, having first taken office in January 2012. He is sued solely in his official capacity. As Sheriff, Mr. Harris serves as a conservator of the peace within the County, with authority to enforce the criminal laws of the Commonwealth, including through the investigation of offenses and the arrest of individuals who violate such laws. Virginia Constitution, Art. VII, § 4; Va. Code § 15.2-1609 et seq. The Sheriff and his deputies are responsible for law enforcement within the County and regularly enforce state criminal statutes. Mr. Harris has a direct and substantial enforcement connection to the criminal provisions of the challenged legislation.

## **JURISDICTION AND VENUE**

8. This Court has subject-matter jurisdiction pursuant to Virginia Code §§ 8.01-184 et seq. (Virginia Declaratory Judgment Act) and Virginia Code §§ 8.01-620 et seq. (injunctive relief). An actual, justiciable controversy exists between the parties within the meaning of Code § 8.01-184. The Act, enacted into law in May 2026, and enforceable beginning July 1, 2026, directly and immediately infringes Plaintiffs' rights under Article I, § 13 of the Constitution of Virginia.

9. Venue is proper in this Court pursuant to Virginia Code § 8.01-261, because Spotsylvania County is the county of residence and operation in their official capacities of Defendants

Mehaffey and Harris, the county in which the individual Plaintiffs Curtis and Wood reside, and the county in which a substantial part of the cause of action arose.

## **CONSTITUTIONAL AND STATUTORY PROVISIONS AT ISSUE**

**10.** Article I, § 13 of the Constitution of Virginia provides in full:

"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, therefore, the right of the people to keep and bear arms shall not be infringed; 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."

**11.** Virginia Code § 44-1 defines the militia of the Commonwealth to consist of all able-bodied residents who are citizens of the United States and are within the relevant age range (generally sixteen to fifty-five years), divided into (1) the National Guard (Army and Air), (2) the Virginia Defense Force, and (3) the unorganized militia.

**12.** Virginia Code § 44-4 provides: "The unorganized militia shall consist of all able-bodied persons as set out in § 44-1, except such as may be included in §§ 44-2 and 44-54.6 and except such as may be exempted as otherwise provided by law." The unorganized militia thus consists of every able-bodied citizen of the Commonwealth within the specified age range who is not a member of the National Guard or the Virginia Defense Force. These are "the body of the people" referenced in Article I, § 13, and they number approximately four million, including all individual plaintiffs herein.

**13.** It bears emphasis that the Virginia Constitution's militia guarantee is, in its text, remarkably broad. Article I, § 13 speaks of "the body of the people" without limitation as to sex, and its implementing statutes extend the relevant age range to all citizens between sixteen and fifty-five. This broad constitutional language reflects the Framers' understanding—expressed by George Mason at the Virginia Ratifying Convention—that the militia comprised "the whole people." The Act's prohibition on acquisition of militia-suitable weapons falls upon this entire constitutional body. Every member of the body of the people is injured by legislation that prevents any of them from arming and training for militia service.

**14.** The Act amends the Code of Virginia to prohibit, effective July 1, 2026: (a) the sale, purchase, importation, manufacture, or transfer of any "assault firearm," defined as any semi-automatic centerfire rifle or pistol capable of receiving a magazine with a capacity of more than 15 rounds or possessing one or more specified features, which are additionally applicable to shotguns (including a detachable magazine combined with a collapsible or folding stock, a thumbhole stock or conspicuous pistol grip, a grenade or flare launcher, or a threaded barrel), except antique firearms, permanently inoperable firearms, and manually operated firearms; and

(b) the sale, purchase, importation, or transfer of any detachable magazine ammunition feeding device capable of accepting more than fifteen (15) rounds of ammunition. Violations are punishable as a Class 1 misdemeanor under Virginia Code § 18.2-11, with a three-year prohibition on firearm purchase or possession following conviction. Critically, law-enforcement officers and agents of the federal, state, and local governments are exempted from both prohibitions.

## STATEMENT OF FACTS

### A. The Militia Clause: Text, History, and Continuing Force

**15.** The militia clause of Article I, § 13—"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"—was drafted by George Mason and adopted by the Virginia Convention on June 12, 1776. It appeared in Virginia's first written constitution, predating the United States Constitution by eleven years and the Second Amendment by fifteen years. It has appeared in every successive Constitution of Virginia and remains operative constitutional text today, unchanged in its essential language across two and a half centuries.

**16.** The balance of Article I, § 13—including the "therefore" clause and the provisions regarding standing armies and civil supremacy over the military—has also been a feature of Virginia's constitutional tradition since the founding era, carried forward through the constitutions of 1830, 1851, 1864, 1870, and 1902. The 1971 revision of the Constitution of Virginia adjusted the textual formulation of the section in certain respects, including the language most directly governing the individual right of the people to keep and bear arms. Plaintiffs' claim rests principally on the militia clause itself—the provision of ancient lineage that neither the 1971 revision nor any other subsequent act has touched. The "therefore" clause, far from limiting or qualifying the militia clause, actually strengthens it: by linking the individual right to keep and bear arms to the militia guarantee through the word "therefore," Article I, § 13 demonstrates the organic constitutional connection between militia service and the right of the people to be armed. Whether the militia clause is treated as independently operative or as the definitional predicate for the individual right, it defines the core of constitutional protection under Article I, § 13.

**17.** Two structural features of Article I, § 13 are critical to the analysis presented here. First, the text uses the word "therefore" to connect the militia clause to the individual right: "...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 connective language is not incidental. It establishes the militia guarantee as the constitutional foundation from which the individual right springs. The people have the right to be armed because they must be capable of militia service. This structural relationship has two important consequences: (a) it demonstrates that the militia clause has independent operative force—it is not a mere preamble to the individual right but is the constitutional command that gives rise to it; and (b) it means that even if the militia clause is

treated as defining the scope and purpose of the individual right rather than as an independent prohibition, the individual right must be construed to encompass at minimum the arms necessary for militia service. Under either reading, the Act's prohibition on militia-standard arms is unconstitutional. Second, and consequently, the militia clause itself has always necessarily implied the right of the body of the people to possess and be trained with arms appropriate to militia service. A militia "composed of the body of the people, trained to arms" is an empty guarantee if the people are prohibited by law from obtaining the arms to which they are to be trained.

**18.** George Mason, who authored the militia clause, defined the militia as "the body of the people" -- the very language that remains in Article I, § 13 today. This meaning embedded in the constitutional text is not a select, professional body of soldiers, but the entire able-bodied population of the Commonwealth. Virginia's statutes faithfully reflect this understanding. Under Virginia Code §§ 44-1 and 44-4, the unorganized militia consists of every able-bodied Virginia citizen within the relevant age range who is not a member of the National Guard or Virginia Defense Force. The individual Plaintiffs who are natural persons are members of the unorganized militia by operation of Virginia law.

**19.** Virginia's militia tradition did not begin in 1776. It stretched back more than a century before the Declaration of Rights, and the militia clause of Article I, § 13 codified principles that had already been practiced for over one hundred and thirty years. As early as 1643, the Virginia General Assembly enacted legislation requiring "every man" to have "a fixt gunn" and to bring arms to church and other public gatherings. See E. Vieira, Jr., *The Sword and Sovereignty: The Constitutional Principles of "the Militia of the several States"* (2012) (documenting this and subsequent enactments). In 1659 and again in 1662, the General Assembly enacted further statutes reinforcing the obligation of every able-bodied man to furnish himself with arms of military grade. Virginia's militia statutes of 1676 and 1684 continued this tradition, requiring militiamen to arm themselves as soldiers with weapons suitable for military service. The consistent theme across all of these enactments—spanning from the earliest colonial period through the Revolution and beyond—was that militia members were required to furnish themselves with arms of the same general character and quality as those used by regular military forces. E. Vieira, *supra*. Virginia's 1705 and 1723 militia statutes likewise required militiamen to present themselves with military-standard arms and equipment, and imposed penalties for failure to do so. *Id.*

**20.** The significance of this legislative history cannot be overstated. When George Mason drafted the militia clause in 1776, he was not creating a new institution or articulating an aspirational ideal. He was constitutionalizing a practice that had been part of Virginia's legal fabric since at least 1643—a period of over one hundred and thirty years. The militia clause of Article I, § 13 was descriptive before it was prescriptive: it described an existing institution, composed of the body of the people, already armed with military-grade weapons, already organized for the common defense. That constitutional description simultaneously became a command: Virginia

shall always have such a militia. The General Assembly cannot now undo by statute what the Constitution requires by its text and has been practiced since the earliest days of the colony. E. Vieira, Jr., *The Sword and Sovereignty*, *supra*.

**21.** Virginia's own legislative history powerfully confirms this understanding. From the earliest colonial period, Virginia's militia statutes did not merely recognize the right of militia members to possess military arms—they imposed an affirmative obligation to do so. The Militia Act of 1738, "An Act, for the better Regulation of the Militia," required every militiaman to "be furnished with a firelock, musket, or fuzee, well fixed, a bayonet fitted to same, or a cutting sword or cutlass, a cartouch-box, and three cartridges of powder," and to "keep at his house, one pound of powder, and four pounds of ball." The Act gave each soldier eighteen months "to furnish and provide himself with arms and ammunition." 5 W. Hening, *Statutes at Large* 16 (1819). The Militia Act of 1755 continued the same obligation, requiring every soldier to be "furnished with a firelock well fixed, a bayonet fitted to same, a double cartouch-box and three charges of powder," and allowing twelve months for each soldier "to furnish and provide himself with arms and ammunition." 7 W. Hening, *Statutes at Large* 93 (1820) (available at: <https://encyclopediavirginia.org/entries/an-act-for-better-regulating-and-training-the-militia-august-1755/>). The post-independence Militia Act of 1777—enacted the year after Article I, § 13 was adopted—required every militiaman to appear "with a rifle and tomahawk, or good firelock and bayonet, with a pouch and horn, or a cartouch or cartridge box, and with three charges of powder and ball," and to "constantly keep one pound of powder and four pounds of ball." Each soldier was "allowed six months after his appointment or enrollment to provide such arms or accoutrements as he had not at the time." 9 W. Hening, *Statutes at Large* 267 (1821) (available at: <https://encyclopediavirginia.org/primary-documents/an-act-for-regulating-and-disciplining-the-militia-may-5-1777/>).

**22.** These statutes establish two constitutional principles of decisive importance. First, self-provision was the default obligation: every able-bodied militiaman was required to furnish himself with military-standard arms at his own expense. Where a soldier was "so poor that he cannot purchase such arms," the county was required to procure them at public expense—but these arms remained county property, were marked with the county's name, and had to be returned upon the soldier's death or removal. 9 W. Hening, *Statutes at Large* 267, 269 (1821); 7 W. Hening, *Statutes at Large* 93, 95 (1820). The poverty provision reinforces rather than undermines the constitutional principle: the founding-era legislature considered it so essential that every militia member be armed with military-standard weapons that it imposed a public obligation to equip even those who could not afford to equip themselves. Second, the obligation to self-provision necessarily presupposed the existence of a free market in arms. Militiamen could not furnish themselves with arms unless arms were available for purchase. As Vieira has documented, a functioning free market in military-grade arms was not merely tolerated but was a constitutional prerequisite for a well-regulated militia: the militia system depended upon the ability of ordinary citizens to acquire, through ordinary commerce, the arms that their militia

obligation required them to possess. E. Vieira, Jr., *The Sword and Sovereignty*, *supra*. The Act challenged here destroys that free market with respect to the most common class of militia-suitable arms, and in doing so strikes at the very foundation of the militia system that Article I, § 13 commands.

**23.** This historical practice creates a reciprocal constitutional duty and right. If the militia clause commands a militia "trained to arms," and if the Commonwealth's own statutes have imposed—particularly in the founding era—upon militia members the obligation to furnish themselves with military-standard weapons, then the militia clause necessarily protects the right to acquire those weapons. A constitutional command that presupposes a citizen's capacity to arm himself cannot coexist with a statute that extinguishes that capacity. Elbridge Gerry warned of precisely this danger during the House debates on what became the Second Amendment: "Whenever Governments mean to invade the rights and liberties of the people, they always attempt to destroy the militia, in order to raise an army upon their ruins." 1 *Annals of Cong.* 778 (1789) (Joseph Gales ed., 1834) (available at: [https://constitution.org/1-Activism/mil/militia\\_debate\\_1789.htm](https://constitution.org/1-Activism/mil/militia_debate_1789.htm)). The Act does not dissolve the militia by name, but it accomplishes the same result by prohibiting the body of the people from acquiring the arms with which they must be trained.

## **B. The Challenged Legislation**

**24.** During the 2026 Regular Session of the Virginia General Assembly, the Senate and House of Delegates passed SB 749 and HB 217, which became law on May 14, 2026. The Act takes effect July 1, 2026.

**25.** The Act employs a features-based definition to identify prohibited "assault firearms." For semi-automatic centerfire rifles capable of accepting a detachable magazine, the Act prohibits those with a magazine capacity in excess of 15 rounds, and/or those with any of the following features: a folding, telescoping, or collapsible stock; a thumbhole stock or a pistol grip that protrudes conspicuously beneath the action; an attached grenade or flare launcher; or a threaded barrel capable of accepting a flash suppressor, silencer, or muzzle brake. Parallel features-based definitions apply to semi-automatic centerfire pistols and semi-automatic shotguns. The definition expressly excludes antique firearms, permanently inoperable firearms, and manually operated (bolt-action, lever-action, pump-action, or slide-action) firearms.

**26.** Effective July 1, 2026, the Act makes it a Class 1 misdemeanor to sell, purchase, import, manufacture, or transfer any "assault firearm" within the Commonwealth. A conviction also results in a three-year prohibition on purchasing, possessing, or transporting any firearm. Virginia Code § 18.2-11 (Class 1 misdemeanor); see also Virginia Code § 18.2-308.1:4 (three-year prohibition). Existing owners may not sell, transfer, or acquire additional weapons of the prohibited type after the effective date.

27. The Act separately prohibits, also effective July 1, 2026, the sale, purchase, importation, or transfer of any detachable magazine ammunition feeding device capable of accepting more than fifteen (15) rounds. Persons who lawfully possess such magazines before that date may retain them for personal use but may not transfer them. Prospective purchasers may not acquire them from any source. The prohibition on new acquisition is total and applies to every member of the unorganized militia equally.

28. Both prohibitions contain a categorical exemption for law-enforcement officers and agents of the United States, the Commonwealth, or any local government. No exemption exists for members of the unorganized militia. The Commonwealth thus expressly acknowledges that persons who bear arms in service of the state require these weapons for the effective performance of their duties, while simultaneously forbidding the unorganized militia—the constitutional defenders of the free state, "the body of the people" whom Article I, § 13 charges with its defense—from acquiring them.

### **C. The Weapons Banned by the Act Are the Arms of the Citizen Militia**

29. The semi-automatic centerfire rifles targeted by the Act—commonly designated AR-15-pattern rifles or "modern sporting rifles"—are the civilian analogs of the M4 carbine, the standard service rifle issued to United States Army and Marine Corps infantry units and to the Virginia National Guard. The M4 is chambered in 5.56×45mm NATO; so are the most common AR-15-pattern rifles. The M4 uses detachable box magazines—standardly the 30-round STANAG magazine; so do AR-15-pattern rifles. The M4 uses a direct impingement or piston-driven gas-operated semi-automatic action (in its semi-auto mode); so do the AR-15-pattern rifles banned by the Act. The primary—and, in the context of civilian ownership, the only—mechanical difference between the M4 and the civilian AR-15 is that the latter fires only semi-automatically, one round per trigger pull, rather than in a burst or automatic mode of which the M4 is capable. In every respect relevant to the militia-utility inquiry, these are the same weapons.

30. The semi-automatic centerfire pistols targeted by the Act occupy the same analytical position. The standard service sidearm of the United States military is the M17 (SIG Sauer P320 variant), which replaced the Beretta M9 in 2017. The M17 is chambered in 9mm NATO and uses detachable box magazines with a standard capacity of seventeen or twenty-one rounds—both of which exceed the Act's fifteen-round limit. The civilian SIG Sauer P320 and functionally equivalent pistols (including the widely owned Glock 17 with its standard seventeen-round magazine and the Glock 19 with its standard fifteen-round magazine that readily accepts seventeen-round magazines manufactured for the Glock 17) are the direct civilian counterparts of the M17. The Act bans any semi-automatic centerfire pistol "capable of accepting" a detachable magazine holding more than fifteen rounds. Because standard-frame 9mm pistols are designed to accept magazines of varying capacity—and because the most widely manufactured 9mm pistol magazines hold seventeen or more rounds—the Act effectively prohibits the acquisition of the most common semi-automatic service pistols in civilian production. These are the sidearms that

militia members throughout the Commonwealth's history have been expected to provide for themselves, and they bear a direct functional relationship to the sidearms currently issued to the Virginia National Guard, federal military personnel, and law-enforcement officers throughout the Commonwealth.

**31.** The text of Article I, § 13 supplies the standard by which constitutionally protected militia arms are to be identified. The clause commands a militia "trained to arms" that is "the proper, natural, and safe defense of a free state." A militia cannot serve as the defense of the free state if it is equipped with weapons inferior to or fundamentally different from those employed by the military forces it must be prepared to supplement or resist. The arms protected by the militia clause are therefore those whose nature and characteristics bear a functional relationship to ordinary military equipment—the weapons with which the body of the people must be armed and trained to serve as an effective militia. This standard is not discretionary. As Vieira has demonstrated, the principle that militia arms must be current and effective is a fixed constitutional requirement that does not depend on legislative authorization or military procurement decisions; it follows from the constitutional command that the militia serve as the defense of the free state, which cannot be satisfied by a militia equipped with arms inferior to those of the forces it must supplement or oppose. E. Vieira, Jr., *The Sword and Sovereignty*, *supra*, at 78.

**32.** Applying this standard, the weapons banned by the Act are paradigmatically protected. The AR-15-pattern rifle and functionally equivalent semi-automatic centerfire rifles are the direct civilian analogs of the M4 carbine—the standard service rifle of the Virginia National Guard and the United States armed forces. The SIG Sauer P320 and functionally equivalent semi-automatic centerfire pistols are the direct civilian analogs of the M17—the standard service sidearm. They are chambered in the same or functionally equivalent cartridges. They use the same standardized detachable magazines. They operate by the same semi-automatic action. They are, by any measure, part of ordinary military equipment and weapons whose use could contribute to the common defense. They are the weapons with which the body of the people must be "trained to arms" if the militia clause is to have any force.

**33.** The Act's very terminology betrays the constitutional infirmity of its prohibitions. The Act employs the term "assault firearm" to describe the weapons it bans. This label is a species of what Vieira has aptly termed "condemnation by adjective"—a rhetorical device by which constitutionally protected militia arms are given an opprobrious modifier designed to make their prohibition seem reasonable, even necessary. E. Vieira, Jr., *The Sword and Sovereignty*, *supra*, at 1358-60. But the adjective "assault" does not alter the constitutional character of the weapons it modifies. The semi-automatic centerfire rifles and pistols banned by the Act are, as demonstrated above, the direct civilian analogs of standard military service weapons—precisely the arms that the militia clause protects. They cannot be stripped of their constitutional protection by the legislative expedient of attaching a pejorative label. The Constitution protects arms suitable for militia service; the General Assembly cannot circumvent that protection by calling

those arms something frightening. If the legislature could nullify constitutional protection by redefining protected items with condemnatory language—calling the press "propaganda organs," or assemblies "mobs"—no constitutional guarantee would be safe. The same principle applies here: the weapons banned by the Act are constitutionally protected militia arms, and they remain so regardless of what the General Assembly chooses to call them.

**34.** Detachable magazines capable of holding more than fifteen rounds occupy the same analytical position. The United States Army's standard-issue magazine for the M4 carbine holds thirty rounds. The standard-issue magazine for the M17 pistol holds seventeen or twenty-one rounds. Law-enforcement agencies throughout the Commonwealth—each of which is exempted from the magazine ban—issue such magazines as standard equipment. These are not accessories of marginal utility; they are, as the Act's own exemptions acknowledge, the operational standard for persons who bear arms in service to the state. By these exemptions, the Commonwealth convicts itself in this case. The militia clause cannot be read to guarantee a militia composed of "the body of the people, trained to arms" while simultaneously permitting the legislature to forbid those people from acquiring the standard-capacity equipment used by every professional armed force in the Commonwealth.

**35.** It bears emphasis that the weapons banned by the Act are among the most widely owned firearms in the United States and the Commonwealth. It is estimated that more than twenty million AR-15-pattern rifles are currently in civilian hands nationwide, and semi-automatic 9mm pistols with standard magazines exceeding fifteen rounds—including the Glock 17, Glock 19, SIG Sauer P320, and Smith & Wesson M&P series—are among the most popular handguns sold in the United States. A substantial number of these are owned by members of the Virginia Unorganized Militia who use them for lawful purposes including home defense, sport shooting, and militia readiness, including Plaintiff Curtis. Their prevalence is itself evidence of their relationship to ordinary civilian-military preparedness and their status as the contemporary equivalent of the muskets, rifles, and pistols that founding-era militia members were expected to supply themselves.

**36.** According to Dr. William English of Georgetown University, approximately 473,653 Virginians owned magazines that hold more than 15 rounds for handguns as of 2020, and 524,583 Virginians owned magazines that hold more than 15 rounds for rifles as of 2020. W.English, "2021 National Firearms Survey: Analysis of Magazine Ownership and Use" at 9, Table 4; and 13, Table 8 (May 4, 2023) (available at: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4444288](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4444288)).

#### **D. Immediate and Irreparable Harm to Plaintiffs**

**37.** The Act inflicts immediate and concrete harm upon the Plaintiffs, injuring each of them on or before its effective date of July 1, 2026.

**38.** Plaintiff Curtis is a member of the unorganized militia who currently owns semi-automatic centerfire rifles and pistols, and standard-capacity magazines that fall within the Act's prohibitions. On July 1, 2026, Mr. Curtis will be forbidden by law from acquiring any additional such weapons or magazines—whether to replace items that are worn out, damaged, or lost, or to expand his capacity for militia readiness. He will simultaneously become subject to criminal prosecution for any transfer of the weapons and magazines he currently owns, even to fellow members of the unorganized militia. His constitutional right under the militia clause to be "trained to arms" will be frozen in place on the effective date and will degrade over time as his existing equipment becomes unserviceable.

**39.** Plaintiff Wood is a member of the unorganized militia who has made a definite decision to purchase a semi-automatic centerfire rifle and standard-capacity magazines for home defense and militia readiness but has not yet done so. On July 1, 2026, his ability to make that purchase will be categorically extinguished by operation of the Act. Unlike Plaintiff Curtis, Mr. Wood will not even possess grandfathered weapons; he will be entirely barred from acquiring the arms with which the militia clause entitles him to be trained. His injury is total and immediate upon the effective date.

**40.** Plaintiff Bob's Gun Shop is a licensed firearms dealer for whom the sale of semi-automatic centerfire rifles, pistols, and standard-capacity magazines constitutes a significant and substantial portion of its business. On July 1, 2026, the Act will permanently prohibit Bob's Gun Shop from selling or transferring any of these items to any member of the public. The resulting loss of revenue is not speculative; it is a certain and intended consequence of the Act that has immediate impact due to the loss of orders for sales from customers and potential customers under threat of prosecution for sales or transfers not consummated by July 1, 2026, and without an ability to transfer weapons and magazines covered by the Act after July 1, 2026, thus deterring them from making purchases prior to that date. Arms covered by the Act make up approximately 20-25% of Bob's Gun Shop's sales, with all such revenue to be lost if the Act goes into effect. Bob's Gun Shop also serves a constitutionally significant function: it is one of the means by which the body of the people arms and equips itself for militia service. The Act eliminates that function entirely with respect to the weapons at issue. Because Bob's Gun Shop must pre-order and pre-purchase stock to sell, the Act does immediate harm to its business.

**41.** Plaintiff Hinkson is a certified firearms instructor, former Marine, and militia-readiness trainer part of whose livelihood and constitutionally protected vocation depend on the availability of the weapons the Act prohibits. On July 1, 2026, the Act will prohibit Mr. Hinkson from acquiring additional semi-automatic centerfire rifles and pistols for instructional use and will prohibit the transfer of such weapons to his students. His students—the overwhelming majority of whom are members of the unorganized militia—will be unable to acquire the weapons about which he teaches. A firearms instructor cannot train a militia that is forbidden by law to obtain the weapons with which it must be trained. The Act does not merely burden Mr. Hinkson's vocation; it eliminates the constitutional predicate upon which it rests. Furthermore,

the harm to Mr. Hinkson is immediate, as all of his training classes are scheduled ahead of time, thus with only two months to legally obtain the soon-to-be-banned weapons and magazines, the pool of new owners seeking training has already begun to shrink.

**42.** Each of these injuries is directly and exclusively caused by the Act. Each would be fully redressed by the declaratory and injunctive relief sought herein. The constitutional questions presented are purely legal and require no further factual development. Plaintiffs are not required to await prosecution before seeking relief from an imminent constitutional injury, as each of them have alleged an intention to engage in a course of conduct affected with a constitutional interest, including but not limited to the buying, selling and transferring of weapons and magazines that are prohibited under the Act. Because Plaintiffs' current and future conduct concerns activity necessary and protected under self-executing Article I, § 13 of Virginia's constitution, it is affected with a constitutional interest. And because the foregoing conduct is explicitly proscribed by the Act, Plaintiffs are immediately suffering injury under the Act. *Daniels v. Mobley*, 737 S.E.2d 895, 901, 285 Va. 402 (2013); *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 159-65 (2014); *Doe v. Bolton*, 410 U.S. 179, 188 (1973); *Babbitt v. United Farm Workers*, 442 U.S. 289, 298 (1979).

This circumstance exists in part because the Commonwealth has admitted the utility and widespread, i.e., common, use of the arms banned under the Act for militia and other constitutionally protected purposes by exempting law enforcement and other members of the organized militia, while also issuing the arms banned under the Act as standard issue arms for those in current service to the Commonwealth.

#### **E. Distinction from *DiGiacinto v. Rector and Visitors of George Mason University***

**43.** The Supreme Court of Virginia's decision in *DiGiacinto v. Rector and Visitors of George Mason University*, 281 Va. 127, 704 S.E.2d 365 (2011), does not foreclose Plaintiffs' claims under the militia clause of Article I, § 13. It is distinguishable on multiple independent grounds.

**44.** First, *DiGiacinto* addressed a geographically limited, location-specific restriction on the carrying of weapons in particular campus buildings and at particular campus events. The Supreme Court of Virginia upheld the George Mason University regulation under the "sensitive places" doctrine articulated in *District of Columbia v. Heller*, 554 U.S. 570 (2008), emphasizing that the regulation applied only to enumerated structures and events while leaving the open grounds of the university freely accessible. The court specifically noted that the regulation was "narrowly tailored," restricted only to places "where people congregate and are most vulnerable." *DiGiacinto*, 281 Va. at 136. The Act challenged in the present case is not a sensitive-places restriction. It is a categorical, statewide prohibition on the acquisition of an entire class of commonly owned firearms and standard-capacity magazines, applicable everywhere in the Commonwealth to every member of the unorganized militia. The sensitive-places doctrine, confined by its own logic to location-based restrictions, has no application here.

45. Second, *DiGiacinto* was litigated and decided entirely under the individual right clause of Article I, § 13. Neither party briefed nor did the court address the militia clause as an independent source of constitutional protection. The court's holding that Article I, § 13 affords rights "co-extensive" with the Second Amendment under *Heller* was made only with respect to the individual-rights challenge to a sensitive-places regulation. *DiGiacinto*, 281 Va. at 133-34. The court did not construe, and its holding does not govern, the independent force and meaning of the militia clause as a textual guarantee of continuous constitutional standing since 1776. Plaintiffs' principal claim here rests on the militia clause—a provision *DiGiacinto* did not reach.

46. Third, the "co-extensiveness" holding of *DiGiacinto* related to the individual right clause establishes a constitutional floor, not a ceiling, for protection under Article I, § 13. Where the militia clause supplies an independent and textually distinct basis for constitutional protection—as it does with respect to militia-appropriate weapons—that protection exists alongside and in addition to any rights that may also be guaranteed by the individual right clause. *DiGiacinto's* holding that the individual right clause is no broader than the Second Amendment does not diminish the force of the separately worded, separately litigated militia clause.

47. Fourth, and independently, the legal landscape has changed materially since *DiGiacinto* was decided in 2011. In *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022), the Supreme Court of the United States held that firearms regulations must be "consistent with this Nation's historical tradition of firearm regulation" to survive Second Amendment scrutiny. *Id.* at 17. To the extent *DiGiacinto's* "co-extensiveness" holding incorporates federal Second Amendment jurisprudence into Article I, § 13, it would now incorporate *Bruen*—which is more protective than the *Heller* framework *DiGiacinto* actually applied. Under *Bruen*, the Commonwealth would bear the burden of identifying a historical analogue for the Act. No such analogue exists. As demonstrated above, the historical tradition of Virginia militia regulation runs in the opposite direction: the Commonwealth has required the body of the people to possess military-standard arms, not prohibited them from doing so. Plaintiffs' independent militia-clause claim offers this Court a path to decision that avoids the complexities of the *Bruen* framework entirely, while reaching the same result that framework would compel.

#### **F. Preservation of Alternative Constitutional Basis**

48. Plaintiffs present this action principally under the militia clause of Article I, § 13, which they contend has independent operative force as a self-executing constitutional command. However, Plaintiffs expressly preserve the alternative argument that the Act also violates the individual right to keep and bear arms guaranteed by the balance of Article I, § 13.

49. Should this Court decline to recognize the militia clause as an independent source of constitutional authority, the historical analysis presented herein demonstrates with equal force that the Act cannot survive scrutiny under the individual right to keep and bear arms. The militia clause, even if treated as non-operative in isolation, defines the purpose and scope of the

individual right. As Vieira has observed, even under the *Heller* majority's approach—which treated the militia clause of the Second Amendment as merely "prefatory"—the relationship between the militia clause and the operative clause cannot be diminished by modern developments. The right to keep and bear arms must relate to what a well-regulated militia requires, because that is the purpose the constitutional text assigns to it. E. Vieira, Jr., *The Sword and Sovereignty*, *supra*, at 1369-71. The militia clause thus serves as a constitutional lodestar: it tells the court what arms the people have the right to keep and bear, and the answer is the arms necessary for militia service.

**50.** Even under the *Heller/Bruen* framework as incorporated into Virginia law through *DiGiacinto*, the Act fails for three independent reasons. First, the weapons banned by the Act are "in common use" for lawful purposes, which under *Heller* is sufficient to establish constitutional protection. *Heller*, 554 U.S. at 624-25. Second, the weapons banned by the Act bear a direct functional relationship to ordinary military equipment, which under *Miller* is the hallmark of constitutionally protected arms. *Miller*, 307 at 178. Third, under *Bruen's* text, history, and tradition framework, the Commonwealth cannot identify any historical tradition of prohibiting militia members from acquiring basic military-standard arms; to the contrary, as documented above, the historical tradition of Virginia militia regulation affirmatively required such acquisition. *Bruen*, 597 U.S. at 17.

**51.** Plaintiffs thus present this Court with two independently sufficient paths to the same result. The militia clause, properly construed as independently operative, prohibits the Act because it disarms the constitutional militia. The individual right clause, informed and reinforced by the militia clause, independently prohibits the Act because there is no historical tradition supporting the prohibition of militia-standard arms. Under either analysis, the Act is unconstitutional.

## CAUSES OF ACTION

### COUNT I

#### VIOLATION OF THE MILITIA CLAUSE, ARTICLE I, SECTION 13, CONSTITUTION OF VIRGINIA (Firearms Ban)

**52.** Plaintiffs incorporate by reference each of the preceding paragraphs as if fully set forth herein.

**53.** The militia clause of Article I, § 13 is a self-executing, operative, independently enforceable provision of the Constitution of Virginia. Its core command is structural: Virginia must possess a "well regulated militia, composed of the body of the people, trained to arms," capable of serving as "the proper, natural, and safe defense of a free state." This command cannot be satisfied if the legislature prohibits the body of the people from acquiring the arms to which they must be

trained. The militia clause thus creates a zone of constitutional protection for the ownership and acquisition of weapons appropriate to militia service—a protection that inheres in the clause itself, independent of and prior to any individual rights doctrine.

**54.** The standard for identifying constitutionally protected militia weapons is supplied by the text and structure of Article I, § 13 itself. The clause commands a militia that is "trained to arms" and that serves as "the proper, natural, and safe defense of a free state." These commands necessarily presuppose that the body of the people may acquire and maintain arms suitable for militia service—that is, arms whose nature and characteristics bear a functional relationship to those employed by the organized military forces of the Commonwealth. *See generally Miller*, 307 U.S. at 178 (the Second Amendment protects weapons with "some reasonable relationship to the preservation or efficiency of a well regulated militia" and those that are "part of ordinary military equipment"). A militia armed with weapons fundamentally different from or inferior to those of the forces it must be prepared to supplement or resist cannot be the "proper" or "safe" defense of the free state that the Constitution demands. The principle that militia arms must be current and effective is a fixed constitutional standard, not a discretionary legislative choice. E. Vieira, Jr., *The Sword and Sovereignty*, *supra*, at 78.

**55.** The weapons banned by the Act meet this standard beyond any reasonable dispute. The semi-automatic centerfire rifles and pistols prohibited by the Act are the direct civilian analogs of the M4 carbine and M17 pistol—the standard service rifle and sidearm of the Virginia National Guard and the United States armed forces. They are chambered in the same or functionally equivalent cartridges. They use the same standardized detachable magazines. They operate by the same semi-automatic action. They are, by any measure, part of ordinary military equipment and weapons whose use could contribute to the common defense. They are the weapons with which the body of the people must be "trained to arms" if the militia guarantee is to have operative force.

**56.** The logical structure of the militia clause reinforces this conclusion. The clause guarantees a militia "trained to arms." Training requires access to the weapons with which one trains. Plaintiff Hinkson—a certified firearms instructor and former Marine whose courses include militia-readiness training—cannot train his students with weapons they are forbidden by law to acquire. Plaintiff Bob's Gun Shop cannot equip the militia by selling weapons that the law forbids it to sell. Plaintiff Curtis cannot be "trained to arms" with a weapon he cannot replace when worn out or damaged. Plaintiff Wood cannot begin to train at all if he cannot purchase the weapon. In every practical respect, the Act deprives the unorganized militia of the capacity to be what the Constitution requires it to be.

**57.** The historical record reinforces this conclusion. Virginia's militia statutes from 1643 through the post-independence period uniformly required militia members to furnish themselves with military-standard arms through the free market. The 1738 and 1755 militia acts required every soldier to provide himself with a firelock, bayonet, and ammunition. The 1777 militia act

continued this obligation in the newly independent Commonwealth. These statutes did not merely tolerate private ownership of military arms; they commanded it. The Act reverses nearly 400 years of Virginia law by prohibiting the very conduct that the Commonwealth's Constitution and militia statutes have always commanded. The Act's designation of these weapons as "assault firearms" does not alter their constitutional character. As Vieira has observed, the technique of "condemnation by adjective"—attaching a pejorative label to constitutionally protected arms in order to justify their prohibition—is a rhetorical device that cannot override constitutional text. E. Vieira, Jr., *The Sword and Sovereignty*, *supra*, at 1358-60. The weapons banned by the Act are militia arms regardless of what the General Assembly calls them.

**58.** The Commonwealth's exemption of law-enforcement officers from the Act's prohibitions is dispositive of the militia-utility question. The General Assembly has made an express legislative finding—embedded in the structure of the Act itself—that persons who bear arms in service to the state require these weapons in order to perform their duties effectively. That concession cannot be reconciled with the position that these same weapons have no reasonable relationship to the functions of the unorganized militia, which Article I, § 13 designates as "the proper, natural, and safe defense of a free state." If the weapons are essential to law enforcement, they are essential to the militia. The Commonwealth cannot establish this equivalence on behalf of its paid professionals while denying it to the unpaid citizens the Constitution relies upon for the defense of liberty.

**59.** The Act's firearms ban is not narrowly tailored to any legitimate governmental interest. It does not restrict where militia members may carry these weapons. It does not impose safety training, licensing, or registration requirements. It prohibits acquisition outright—permanently and statewide—of an entire class of weapons whose militia utility is self-evident. Such a categorical, permanent, statewide prohibition on the acquisition of constitutionally protected militia arms cannot survive scrutiny under the militia clause of Article I, § 13. The historical record confirms this conclusion. Under the text, history, and tradition framework utilized by the Supreme Court of the United States with regard to the Second Amendment in *Bruen*, the government bears the burden of demonstrating that a firearms regulation is "consistent with this Nation's historical tradition of firearm regulation." *Bruen*, 597 U.S. at 17. Any similar analysis under Article I, § 13 of Virginia's Constitution would find that not only is there no historical tradition of prohibiting militia members from acquiring military-standard arms, but the historical tradition of Virginia militia law—spanning from 1643 through 1777 and beyond—affirmatively required militia members to acquire and maintain such arms. The Act is not merely unsupported by historical tradition; it is the precise inverse of that tradition.

**60.** The firearms ban set forth in the Act therefore violates Article I, § 13 of the Constitution of Virginia, both under the militia clause as an independent source of constitutional authority and, alternatively, under the individual right to keep and bear arms as informed and defined by the militia clause. Plaintiffs are entitled to a declaration to that effect, to a preliminary injunction

against enforcement of the assault-firearms provisions of the Act pending final disposition of this action, and to a permanent injunction upon final adjudication on the merits.

## COUNT II

### VIOLATION OF THE MILITIA CLAUSE, ARTICLE I, SECTION 13, CONSTITUTION OF VIRGINIA (Magazine Ban)

**61.** Plaintiffs incorporate by reference each of the preceding paragraphs as if fully set forth herein.

**62.** For the reasons set forth in Count I, the militia clause of Article I, § 13 protects from legislative prohibition those arms, accessories, and related equipment whose nature and characteristics bear a functional relationship to ordinary military equipment. Detachable ammunition feeding devices capable of holding more than fifteen rounds are not optional accessories or luxury modifications. They are, as a matter of historical fact and contemporary military practice, standard equipment for the weapons they accompany.

**63.** The United States Army's standard-issue magazine for the M4 carbine—the service rifle of the Virginia National Guard—holds thirty rounds. The standard-issue magazine for the M17 pistol holds seventeen or twenty-one rounds. The Virginia State Police and virtually every law-enforcement agency in the Commonwealth issue magazines of fifteen or more rounds as standard operating equipment. These facts are sufficient to establish that detachable magazines holding more than fifteen rounds are arms suitable for militia service—indeed, they are the actual standard magazines issued to the militia's organized counterpart. The Act's own exemption of law-enforcement officers confirms this: the Commonwealth expressly preserves for its professional armed employees the right to acquire and use the very magazines it forbids the unorganized militia to obtain.

**64.** The magazine ban has a compounding effect on the underlying assault-firearms prohibition that gives it independent constitutional significance. A member of the unorganized militia who currently owns an AR-15-pattern rifle or standard-frame 9mm pistol with standard-capacity magazines is grandfathered in possession—but if those magazines are lost, damaged, worn out or destroyed after July 1, 2026, they cannot be replaced. Over time, the ban will effectively deprive the militia of standard-capacity equipment even for weapons it is otherwise permitted to retain. The deprivation is gradual but it is certain, and it is no less unconstitutional for being prospective.

**65.** The Commonwealth cannot analogize the magazine ban to founding-era gunpowder-storage regulations, such as the Act of March 1, 1783, 1782 Mass. Acts 218, ch. 13, or the 1784 New York law regulating the storage of gunpowder in buildings. Those statutes were fire-safety measures: they regulated where and how gunpowder could be stored within urban buildings to

prevent conflagrations, not how much ammunition a citizen could own or what capacity his weapon could hold. *See Heller*, 554 U.S. at 632 (distinguishing such regulations). The Act challenged here does not regulate the manner of storage; it categorically prohibits acquisition and transfer. The distinction between regulating the conditions of possession and prohibiting possession itself is fundamental, and no founding-era precedent supports the latter with respect to militia-standard arms or their standard-capacity magazines.

**66.** A militia member equipped with a semi-automatic rifle limited to fifteen-round magazines is not "trained to arms" in the same manner or to the same level of effectiveness as one equipped with standard thirty-round magazines. A militia member equipped with a service pistol limited to fifteen rounds is not trained to the same standard as one equipped with the standard seventeen- or twenty-one-round magazine. This is not speculation; it is the judgment of every professional military and law-enforcement organization in the Commonwealth, upon information and belief, all of which issue higher-capacity magazines as standard equipment. The militia clause of Article I, § 13 does not permit the legislature to hobble the effectiveness of the unorganized militia by cutting off its supply of standard equipment while preserving that same equipment for the use of paid state employees.

**67.** The magazine ban set forth in the Act therefore independently violates Article I, § 13 of the Constitution of Virginia, both under the militia clause as an independent source of constitutional authority and, alternatively, under the individual right to keep and bear arms as informed and defined by the militia clause. Plaintiffs are entitled to a declaration to that effect, to a preliminary injunction against enforcement of the magazine ban provisions of the Act pending final disposition of this action, and to a permanent injunction upon final adjudication on the merits.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully pray that this Court enter judgment in their favor and against Defendants as follows:

A. A declaratory judgment, pursuant to Virginia Code § 8.01-184 et seq, that the firearms ban provisions of the Act (SB 749 / HB 217, 2026 Regular Session of the Virginia General Assembly) violate Article I, § 13 of the Constitution of Virginia;

B. A declaratory judgment that the magazine ban provisions of the Act independently violate Article I, § 13 of the Constitution of Virginia;

C. A preliminary injunction, issued without delay, enjoining Defendants, their officers, agents, servants, employees, and all persons acting in concert or participation with them, from enforcing or threatening to enforce the assault firearms ban and magazine ban provisions of the Act against Plaintiffs pending final disposition of this action;

D. A permanent injunction, following final adjudication on the merits, enjoining Defendants and all persons acting under their direction or authority from enforcing or threatening to enforce any provision of the Act against Plaintiffs that is held unconstitutional by this Court;

E. An award of reasonable attorneys' fees and costs of this action pursuant to such authority as the Court may identify; and

F. Such other and further relief as the Court may deem just and proper.

Respectfully submitted,

A handwritten signature in black ink that reads "Ken Cuccinelli II". The signature is stylized, with the first name "Ken" written in a cursive script and the last name "Cuccinelli" in a more blocky, uppercase style. The Roman numeral "II" is written to the right of the last name.

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By Counsel  
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E: KTCLaw@proton.me

Counsel for Plaintiffs

Dated: May 19, 2026

**VERIFICATION OF DUSTIN R. CURTIS**

I, Dustin R. Curtis, being first duly sworn, depose and state as follows:

1. I am a Plaintiff in this action. I have read the foregoing Complaint for Declaratory Judgment and Injunctive Relief and know the contents thereof. The facts stated therein concerning me are true to the best of my knowledge, information, and belief.
2. I am an adult citizen of the Commonwealth of Virginia, residing in Spotsylvania County. I am a member of the unorganized militia of Virginia as defined by Virginia Code §§ 44-1 and 44-4.
3. The allegations in the Complaint concerning the injuries I face as a result of the enforcement of Senate Bill 749 and House Bill 217 (2026 Regular Session) are true and correct to the best of my knowledge, information, and belief.

Dustin R. Curtis

Dustin R. Curtis

COMMONWEALTH OF VIRGINIA  
COUNTY OF SPOTSYLVANIA, to-wit:

Subscribed and sworn to before me this 18<sup>th</sup> day of May, 2026, by Dustin R. Curtis.

Laura N. Hoppe

Notary Public

My commission expires: 08/31/2027

Registration No.: 7851421



**VERIFICATION OF BLAUSTEIN & REICH, INC., d/b/a BOB'S GUN SHOP**

I, STEPHEN A. DOWDY, being first duly sworn, depose and state as follows:

1. I am the PRESIDENT / OWNER of Blaustein & Reich, Inc., d/b/a Bob's Gun Shop, a Plaintiff in this action. I am authorized to execute this verification on behalf of the company. I have read the foregoing Complaint for Declaratory Judgment and Injunctive Relief and know the contents thereof. The facts stated therein concerning Bob's Gun Shop are true to the best of my knowledge, information, and belief.

2. Blaustein & Reich, Inc., d/b/a Bob's Gun Shop is a Virginia company and licensed firearms dealer with its principal place of business in ~~Spotsylvania County~~, Virginia.

NORFOLK

3. The allegations in the Complaint concerning the injuries Bob's Gun Shop faces as a result of the enforcement of Senate Bill 749 and House Bill 217 (2026 Regular Session) are true and correct to the best of my knowledge, information, and belief.



Name: STEPHEN A. DOWDY  
Title: PRESIDENT  
Blaustein & Reich, Inc., d/b/a Bob's Gun Shop

COMMONWEALTH OF VIRGINIA  
COUNTY OF CITY OF NORFOLK, to-wit:

Subscribed and sworn to before me this 18<sup>th</sup> day of May, 2026, by  
STEPHEN A. DOWDY, as PRESIDENT / OWNER of Blaustein & Reich, Inc.,  
d/b/a Bob's Gun Shop.



Notary Public

My commission expires: 1/31/2030  
Registration No.: 212441

