VIRGINIA:

IN THE CIRCUIT COURT OF FAUQUIER COUNTY

ERIC BLACK, BRITTON CONDON, CLARK'S GUN SHOP, INC., OPTIMUS ARMS, LLC, and HEXMAG USA, LLC, Plaintiffs, v. SCOTT C. HOOK, in his official capacity as the Commonwealth's Attorney for Fauquier County, Defendant.	)	Civil Action No.: CL26-241

BRIEF IN SUPPORT OF EMERGENCY MOTION FOR A PRELIMINARY INJUNCTION

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INTRODUCTION

Law-abiding Virginians have been keeping and bearing arms for self-defense since the earliest days of the Old Dominion. When Captain John Smith left Jamestown to return to England, he "stated that there was scarcely a man in the Colony who was not furnished with 'a piece, a lock, a coat-of-mail, a sword or rapier.'" 2 Philip Alexander Bruce, *Institutional History of Virginia* 31 (reprt. 1964) (1910). "[S]o indispensable to every person for the defence of himself and family was the possession of arms and ammunition considered" that "the people" were "encourage[d]" "to provide themselves freely with" arms of all "different kinds," from "muskets, pistols, carbines, and fowling pieces" to the then-state-of-the-art "rifle," which a skilled "colonist could employ" against everything from "Indian assault" to "such fierce wild beasts as bears, leopards, and wolves." *Id.* at 35, 43, 52. During the Antebellum period, "[t]he right of bearing arms" was "practically enjoyed by every citizen" in Virginia, and was broadly considered "among his most valuable privileges, since it furnishes the means of resisting, as a freeman ought, the inroads of usurpation." 1 Henry St. George Tucker, *Commentaries on the Laws of Virginia* 43 (1846). Over a century after the Civil War, the General Assembly emphatically resolved that "the right to keep and bear arms … is an inalienable part of our citizens' heritage," and "that no agency of this State or of any political subdivision should be given any power" to "prohibit the purchase or possession of firearms by any citizen of good standing for the purpose of personal defense, sport, recreation or other non-criminal activities." Journal of the Senate of Virginia 250-51, 472 (1964). And not long thereafter, hundreds of thousands of Virginians registered their agreement, turning out in droves to "enshrine[]" a textual right to keep and bear arms into Article I, §13 of the Virginia Constitution, much as the Framers of the U.S. Constitution had done centuries earlier by ratifying the Second Amendment, *see* U.S. Const. amend II.

Like its concomitant federal right, Article I, §13 "t[oo]k[] certain policy choices off the table"—including laws "banning from the home 'the most preferred firearm in the nation to 'keep' and use for protection of one's home and family.'" *District of Columbia v. Heller*, 554 U.S. 570, 628-29, 635-36 (2008). Such laws "fail constitutional muster" "[u]nder any … standard[] of scrutiny," *id.*—and certainly under the historical tradition standard that governs Second Amendment analysis under *New York State Rifle & Pistol Association v. Bruen*, 597 U.S. 1 (2022).

Thumbing its nose at that unequivocal rule, recently enacted Senate Bill 749 ("SB749") takes the radical step of banning nearly every modern semiautomatic rifle—including "the most popular rifle in the country," which just last year the United States Supreme Court unanimously agreed is "widely legal and purchased by many ordinary consumers" for self-defense, hunting, target shooting, and other lawful recreation. *Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, 605 U.S. 280, 297, 283 (2025). Not content to stop there, SB749 also bans many semiautomatic pistols, even those among "the weapons most commonly used today for self-defense." *Caetano v. Massachusetts*, 577 U.S. 411, 417-18 (2016) (Alito, J., concurring in the judgment). SB749 bans many common shotguns, too—including, as Governor Spanberger recently forthrightly acknowledged, shotguns "frequently used for hunting." Press Release (May 25, 2026), https://perma.cc/A578-QEHH. And SB749 does not stop with the guns themselves; it also bans "ammunition feeding devices" (i.e., magazines) capable of holding more than 15 rounds—even though such devices themselves are constitutionally protected arms owned by tens of millions of Americans and essential for common semiautomatic firearms to operate as intended. Begrudgingly recognizing that there are *hundreds of millions* of such arms in circulation, including in every Virginia county, SB749 excepts firearms and magazines lawfully possessed before July

1, 2026. But after July 1, these arms can no longer be bought or sold in Virginia—and those already owned cannot change hands except for limited exceptions like inheritance.

None of that is consistent with the U.S. or Virginia Constitutions, which protect "weapons that are unquestionably" "in 'common use' for self-defense today." *Bruen*, 597 U.S. at 47. By that standard, SB749 is unquestionably unconstitutional, as it is at odds with the decisions of the framers of both Constitutions to entrust law-abiding citizens with arms that they commonly find useful. The Court should grant a preliminary injunction enjoining its enforcement forthwith. Given SB749's July 1 effective date and the potential need for either side to seek appellate relief, Plaintiffs respectfully request a hearing and relief on this motion before June 19, 2026.

BACKGROUND

I. America Has A Long Tradition Of Using Semiautomatic Firearms And Over-15-Round Magazines For Self-Defense And Hunting.

"[T]he first firearm that could fire more than ten rounds without reloading was invented around 1580," and several such firearms "pre-date[d] the American Revolution," some by "nearly one hundred years." *Duncan v. Bonta*, 970 F.3d 1133, 1147 (9th Cir. 2020), *reh'g en banc granted, opinion vacated sub nom.*, *Duncan v. Becerra*, 988 F.3d 1209 (9th Cir. 2021), *and on reh'g en banc sub nom.*, *Duncan v. Bonta*, 19 F.4th 1087 (9th Cir. 2021), *cert. granted, judgment vacated*, 142 S.Ct. 2895 (2022), *and vacated and remanded*, 49 F.4th 1228 (9th Cir. 2022). In 1777, the Continental Congress ordered 100 firearms that could "discharge sixteen, or twenty" rounds in as little as "five seconds," Joseph Belton, *Letter to the Continental Congress, Apr. 11, 1777*, in *Papers of the Continental Congress, Compiled 1774-1789, vol. 1 A-B*, at 139, though the deal ultimately fell through when the creator demanded an "extraordinary allowance," 7 *Journals of the Continental Congress 1774-1789*, at 324, 361 (1907). As for the other side of the Revolutionary War, "British soldiers" had been using "magazine-fed" "multi-shot firearms" since "1658."

Duncan, 970 F.3d at 1147. And it was not just firearms used for military purposes that were designed to fire several times without reloading: The Pepperbox-style pistol could "shoot 18 or 24 shots before reloading individual cylinders." *Id.* The Girandoni air rifle—"famously carried on the Lewis and Clark expedition"—"had a 22-round capacity." *Id.*

Like many other things, firearm technology evolved considerably during the Industrial Revolution, allowing mass production (and widespread acceptance) of high-capacity repeating firearms. "[I]n 1860," "Oliver Winchester's New Haven Arms Company" came out with "t[h]e 'Henry' ... "that could fire sixteen rounds without reloading (one in the chamber and fifteen from an attached, tubular magazine)." Compl.Ex.1 ¶58. Further innovation soon led to the Winchester Model 1866, which "could fire 18 rounds in half as many seconds." *Duncan*, 970 F.3d at 1148; Compl.Ex.1 ¶58. Not content for Winchester to capture the market, the Evans Company soon began selling thousands of repeating firearms holding 28 or 34 rounds. Compl.Ex.1 ¶62. Colt was not far behind: It started selling its "popular Lightning Slide Action Rifle," which "had a twelve- or fifteen-round tube magazine and used a pump-action to cycle rounds into the chamber," by the tens of thousands in the 1880s. *Id.* These arms could fire as many as 28 rounds per minute. Nicholas J. Johnson et al., *Firearms Law and the Second Amendment* 403 (2d ed. 2018).

The close of the nineteenth century brought another "innovation," from "[l]ever-action or pump-action" firearms, which require the shooter to operate a lever or pump, respectively, to eject a spent casing and chamber a new round, to semiautomatic firearms, which "enlist some of the energy released by the first round to eject the spent casing and chamber the next round." Compl.Ex.1 ¶69. The term "semiautomatic" thus describes firearms that discharge only a single projectile with each actuation of the trigger, no matter how long the trigger is depressed or otherwise actuated. The "automatic" part of this term refers to the fact that the chamber will

automatically reload and be ready for the next trigger pull; semiautomatic firearms remain only "*semi*automatic" because the trigger must still be depressed each time the shooter wishes to fire. *See* Nicholas J. Johnson et al., *Firearms Law and the Second Amendment* 1984 (3d ed. 2021) (2024 Supp.) ("Each time the gun is fired, the semi-automatic action uses part of the energy from firing the cartridge to automatically eject the spent casing, recock the firing mechanism, and load a new cartridge into the firing chamber."). By contrast, a *fully* automatic firearm—sometimes called a machine gun—will discharge rounds for as long as the trigger is actuated.

"[S]emi-automatic firearms first started coming on the market in the 1890s." Compl.Ex.1 ¶70. That was, not coincidentally, right around the time that detachable magazines—which are necessary for many semiautomatic firearms to function—became commercially available as well. *Id.* ¶¶70, 72. The first firearm to use a detachable box magazine was the Jarre harmonica pistol of 1862, but its horizontal-feeding magazine made it awkward to use; the modern detachable box magazine, which commonly inserts either in the firearm's grip or just in front of it, first enjoyed commercial success with the "broomhandle" Mauser, a semiautomatic, recoil-operated pistol that used a box magazine, which launched in 1896. Johnson et al., *supra*, at 518 (3d ed.) (2024 Supp.).

The proliferation of semiautomatic firearms during the nineteenth century stands in stark contrast with the history of fully automatic firearms, which developed at roughly the same time, but were never widely accepted for self-defense or hunting purposes. Early automatic firearms were cumbersome devices that took multiple people to maneuver and operate. Compl.Ex.1 ¶70. Though technology evolved to the point where fully automatic guns could be carried and fired by one person in the 1920s, they never became popular for self-defense or other lawful purposes; they were instead commonly used for criminal purposes, prompting Congress and 32 states to pass laws banning (or functionally banning) machine guns between 1925 and 1934. *See id.* Fully automatic

firearms remain heavily regulated under federal law, and nearly all commerce in them has been explicitly banned since 1986. *See* Pub. L. No. 99-308, 100 Stat. 449 (1986).

Unlike fully automatic firearms, semiautomatic firearms with detachable magazines continued to gain both popularity and legal acceptance throughout the twentieth century. Indeed, the U.S. government subsidized the spread of these arms: In 1963, the federal government sold hundreds of thousands of surplus M-1 carbines capable of holding up to 30 rounds to civilians at a steep discount, chiefly through the congressionally established Civilian Marksmanship Program. *See Duncan*, 970 F.3d at 1148; David B. Kopel, *The History of Firearms Magazines and Magazine Prohibitions*, 78 Albany L. Rev. 849, 859 (2015). 1963 was also the year that "[t]he AR-15 was brought to the market … with a then-standard magazine of twenty." Kopel, *supra*, at 859-60. That baseline increased to a "thirty-round standard magazine … a few years later," with accessories like pistol grips, collapsible stocks, and flash suppressors soon to follow. *Id.* Then "Springfield Armory brought out the M1A semiautomatic rifle in 1974, with a twenty-round detachable box magazine," which remains "very popular to this day." *Id.* Soon thereafter in 1976 came the Beretta model 92—still "one of the most popular of all modern handguns"—which is "a nine millimeter pistol with a sixteen-round magazine." *Id.* at 861. Yet until "the 1990's, there was no national history of banning weapons" based on how many rounds they could fire without reloading, let alone "because they were equipped with furniture like pistol grips, collapsible stocks, flash hiders, … or barrel shrouds." *Miller v. Bonta*, 542 F.Supp.3d 1009, 1024 (S.D. Cal. 2021). Nor was there any history of banning the sale or possession of magazines "separately from the guns themselves." Compl.Ex.1 ¶76; *see* Kopel, *supra*, at 864-67. In fact, until California banned certain semiautomatic rifles in 1989, and New Jersey banned 15-round detachable magazines in 1990,

only a handful of jurisdictions had ever tried anything like that, and those efforts were mostly short-lived. *See* Compl ¶26 (citing, *e.g.*, quickly repealed Michigan and Rhode Island laws).

II. SB749 Criminalizes Virtually All Semiautomatic Firearms And Over-15-Round Magazines.

A. SB749 Bans "Assault Firearms."

New Virigina Code §18.2-287.4:1 is the centerpiece of SB749's (and its House of Delegates equivalent, HB217) "assault firearm" ban. It makes "[a]ny person who imports, sells, manufactures, purchases, or transfers an assault firearm" "guilty of a Class 1 misdemeanor." Compl.Ex.2 at 1:36-37; *see also* Compl.Ex.2 at 10:555-59 (similar). The only exceptions are that: (i) certain government officers, law enforcement personnel, or members of the armed services acting within the scope of their duties can receive "assault firearms"; (ii) members of the armed services or their spouses who own an "assault firearm" and are transferred to Virginia on lawful orders can import their "assault firearms"; (iii) federally licensed firearms dealers can sell "assault firearms" to other dealers or to the armed forces, consumers outside the Commonwealth, senior military colleges, or law-enforcement agencies; (iv) cadets can receive "assault firearms" for purposes of performing in training or ceremonial events; (v) people who already have "assault firearms" can transfer them to dealers (permanently or temporarily) or to non-Virginians (permanently); (vi) people can receive an "assault firearm" through inheritance; (vii) gun ranges can loan an "assault firearm" to a customer for on-premises use; (vii) people can import an "assault firearm" lawfully purchased prior to July 1, 2026; or (viii) people can receive an "assault firearm" as a gift from certain relatives who lawfully possessed the firearm before July 1, 2026. Compl.Ex.2 at 1:38-2:65.

A Class 1 misdemeanor is no minor infraction: Violators face up to a year of imprisonment and a $2,500 fine. *See* Va. Code §18.2-11(a). And that is not the only penalty for violating the

new "assault firearm" ban. SB749 also codifies Virginia Code §18.2-308.1:9, which makes it a crime for anyone who violates the "assault firearm" ban to then "knowingly and intentionally purchase[], possess[], or transport[] any firearm" whatsoever. Compl.Ex.2 at 3:139-40.

B. SB749's Definition of "Assault Firearm" Encompasses Virtually All Modern Semiautomatic Firearms.

Perhaps those prohibitions could satisfy constitutional muster if Virginia had taken care to ensure that SB749 covers only a narrow subset of firearms. Unfortunately, the Commonwealth did the opposite, adopting a capacious new definition of "assault firearm" that sweeps in all manner of common semiautomatic rifles, pistols, and shotguns. *See* Compl.Ex.2 at 5:288-6:318.

The definition's second numbered paragraph sweeps in any semiautomatic rifle with the ability to accept a detachable magazine and one or more prohibited characteristics. Virtually every modern semiautomatic rifle in common use for self-defense and/or hunting falls into that capacious category. That should come as little surprise; many of those characteristics are specifically designed to make firearms safer and/or more accessible for people with physical limitations. *See* Compl. ¶39. And this paragraph unquestionably covers what is by far the most popular style of rifle today: the "modern sporting rifle," including the AR-15 and its many variants, known as "AR-style rifles" or "AR-platform rifles." Modern sporting rifles are "widely legal and purchased by many ordinary consumers" for self-defense and hunting. *Smith & Wesson*, 605 U.S. at 297, 283 (2025) ("The AR-15 is the most popular rifle in the country."). *See generally* Compl. ¶38 (explaining that modern sporting rifles are more common than Ford F-150s and subscriptions to the *New York Times*). Millions of people have purchased an AR-style rifle for self-defense purposes; millions more for hunting; and millions more for other forms of lawful recreation. *Miller*, 542 F.Supp.3d at 1022.

The definition's third numbered paragraph concerns semiautomatic pistols, and largely tracks SB749's approach to rifles by sweeping in any semiautomatic pistol with two or more prohibited characteristics, many of which are also designed to make pistols safer and/or more accessible for people with physical limitations. *See* Compl. ¶40. Pistols meeting this definition are among "the weapons most commonly used today for self-defense" and lawful recreation. *Caetano*, 577 U.S. at 416-17 (Alito, J., concurring in the judgment); *see, e.g.*, 86 Fed. Reg. 30,826, 30,831 (June 10, 2021) (describing "AR-type pistols" as "popular large handgun[s]").

The definition's fourth and fifth numbered paragraphs concern semiautomatic shotguns—which are also quite common, offering a "high level of reliability and versatility" that makes them "the overwhelming favorite" for many outdoor enthusiasts. Phil Bourjaily, *History of the Semiauto*, Ducks Unlimited (Sep. 11, 2024), https://perma.cc/LK42-VFZ2. "Semiautomatic shotguns have become so common today that the shuck of a pump gun—at least in the duck blind—threatens to join the clack of a typewriter and the jangling ring of a telephone in the catalog of forgotten sounds." Bourjaily, *supra*. Their "versatility, stopping power and ease of use" also make them "one of the most effective firearms for home defense." Scott W. Wagner, *Best Home Defense Shotguns*, USCCA (July 12, 2024), https://perma.cc/V7MJ-N3TE. Yet many of the semiautomatic shotguns in common use today—including several of *Outdoor Life*'s "10 Best Semi-Auto Shotguns for Every Budget and Purpose"—are now prohibited "assault firearms" thanks to SB749. *See* Alex Robinson, *The 10 Best Semi-Auto Shotguns for Every Budget and Purpose*, Outdoor Life (Jan. 3, 2025), https://perma.cc/E5PG-TCST (recommending, *e.g.*, a shotgun with a pistol grip for turkey hunting, and a shotgun that can be configured with a "folding stock" for "home defense, competition, and general training"). So too are some of the most popular shotguns that responsible parents use to introduce children to hunting—which, as a matter of basic

biomechanics, also often have folding or collapsible stocks. *See* Orvis, *What Shotgun Is Best For Kids?* (2026), https://perma.cc/CT6S-NG25.

C. SB749 Bans "Large Capacity Ammunition Feeding Devices."

SB749 also contains a "large capacity ammunition feeding device" ban, transforming many of the most common firearm magazines into contraband—even though, as noted above, those magazines are not only ubiquitous, but foundational to the design and intended operation of many of the most common semiautomatic firearms. New §18.2-309.1 makes it "a Class 1 misdemeanor" to "import[], sell[], barter[], transfer[] or purchase[] a large capacity ammunition feeding device," subject to similar exceptions as the "assault firearms" ban. Compl.Ex.2 at 10:590-609. "Large capacity ammunition feeding device" is defined as "a magazine, belt, drum, feed strip, or similar device that has a capacity of, or that can be readily restored or converted to accept, more than 15 rounds of ammunition." Compl.Ex.2 at 10:586-89.

It merits emphasis that an over-15-round magazine is not actually "large" in comparison to conventional magazines of either the past or the present. "In 1927, the Auto Ordinance Company introduced their semiautomatic rifle that used thirty round magazines." Kopel, *supra*, at 858-59. When "[t]he AR-15 was brought to market in 1963," it had "a then-standard magazine of 20; the thirty-round standard magazine was developed a few years later." *Id.* at 859-60. Many popular semiautomatic pistols likewise have long come standard-issue with over-15-round magazines. "[S]everal variants of the Glock pistol—dubbed 'America's gun' due to its popularity—come standard with a seventeen-round magazine." *Duncan*, 970 F.3d at 1142. "Another popular handgun used for self-defense is the Beretta Model 92, which entered the market in 1976 and comes standard with a sixteen-round magazine." *Id.*; *see supra* p.6. These pistols and others—including multiple SIG SAUER models that come standard with 17-round magazines—have

topped the sales charts for years. *See, e.g.*, Press Release, *SIG SAUER P365 & P320 Ranked Most Popular Handguns in America* (Jan. 31, 2024), https://perma.cc/4Y37-9T33.

There are countless over-15-round magazines in common use today, including in every county of the Commonwealth. In addition to being necessary for many of the ubiquitous firearms described above to operate as intended in hunting applications, over-15-round magazines are themselves the preferred option for many self-defense applications. *See* Compl. ¶¶47-48.

III. SB749 Harms Plaintiffs In Myriad Ways.

By indefinitely banning virtually all private commerce in semiautomatic firearms and over-15-round magazines starting July 1, 2026, SB749 prevents Plaintiffs Eric Black (a retired Green Beret and avid hunter) and Britton Condon (an internationally renowned sporting-clay competitor) from engaging in arms-bearing conduct: Both have concrete plans to purchase arms and magazines falling within SB749's definitions of "assault firearm" and "large capacity ammunition feeding device" after that date. *See* Affidavit of E. Black ¶¶2, 5-6 (Ex.1); Affidavit of B. Condon ¶¶2, 5-6 (Ex.2). As those plans suggest, and as historical sales data confirms, SB749 also portends a devastating loss of business for Clark Brothers, a highly regarded Warrenton gun shop; in recent years, 26% of its annual revenue has been attributable to sales of arms and magazines falling within SB749's definitions of "assault firearm" and "large capacity ammunition feeding device"—not to mention the additional harms SB749 foists on its customers. *See* Affidavit of S. Clark ¶¶4-5, 7-11 (Ex.3). What is more, without a preliminary injunction, Clark Brothers may be left sitting on thousands of dollars of inventory that it will no longer be able to sell once SB749 takes effect. *Id.* ¶6. Even starker irreparable harms will befall Plaintiff Optimus Arms, a firearm manufacturer whose entire business hinges on its ability to sell arms meeting SB749's definition of "assault firearms" to Virginia consumers. *See* Affidavit of R. Brush ¶¶3-7 (Ex.4). Without an injunction,

Optimus will likely have to close or move out of the state; either way, it will be guaranteed to lose significant investments in its manufacturing capabilities. *Id.* SB749 similarly harms Plaintiff Hexmag USA, LLC, a magazine manufacturer and retailer which stands to permanently lose up to 41% of the revenue it generates selling magazines to Virginia customers. *See* Affidavit of R. Brush ¶¶3-8 (Ex.5).

ARGUMENT

A court may issue a preliminary injunction anytime "the underlying claim will more likely than not succeed on the merits," "the movant will more likely than not suffer irreparable harm without" the injunction, "the balance of hardships … favors" the injunction, and the injunction "is not contrary to the public interest." Va. Sup. Ct. R. 3:26(c)-(d). In cases where "the likely irreparable harm to the movant is severe and any corresponding harm to the nonmovant is slight," a court may issue a preliminary injunction "even if the court cannot determine at the time that the movant will likely succeed on the merits." Va. Sup. Ct. R. 3:26(e).

I. Plaintiffs Are Likely To Succeed On The Merits.

A. SB749 Violates the U.S. Constitution.

1. The Supreme Court has opined multiple times that states may not ban arms that "law-abiding citizens" "typically possess[] … for lawful purposes." *Heller*, 554 U.S. at 625; *accord Bruen*, 597 U.S. at 21 ("[T]he Second Amendment protects the possession and use of weapons that are 'in common use at the time.'"). SB749 flouts that command several times over. It bans both modern sporting rifles, which the Supreme Court *unanimously* reminded last year are "the most popular rifle in the country," *Smith & Wesson*, 605 U.S. at 297, as well as all manner of common pistols and shotguns that—as Governor Spanberger herself acknowledged—are widely used for

recreation, hunting, and home-defense. *See supra* p.2.[1] That suffices to render its sweeping firearms ban unconstitutional under the Second Amendment.[2]

The same logic applies with equal force to SB749's magazine ban. Magazines—or, in SB749's vernacular, "ammunition feeding devices"—are plainly "bearable arms" protected by the Second Amendment, as they unquestionably "facilitate armed self defense." *Bruen*, 597 U.S. at 28. As the phrase "feeding device" itself illustrates, magazines are not passive holders of ammunition, like cardboard cartridge boxes of yore; they are mechanically essential to the design of semiautomatic firearms and the mechanism that makes them work as intended. In short, an "ammunition feeding device" is an integral part of "a[] thing that a man ... takes into his hands, or useth in wrath to cast at or strike another." *Heller*, 554 U.S. at 581. And while "[t]here may well be some capacity above which magazines are not in common use," "that capacity surely is not ten" or 15, given that the most popular semiautomatic firearms available today come standard-issue with magazines holding well north of 15 rounds. *Heller v. District of Columbia*, 670 F.3d 1244, 1261 (D.C. Cir. 2011); *see supra* pp.10-11. SB749's effort to outlaw over-15-round magazines is thus unconstitutional as well. *See also* Compl ¶50 (collecting cases from other jurisdictions).

2. Because the U.S. Supreme Court has already held that bans on common arms violate the Second Amendment, that is the end of the analysis; for laws like SB749, common use is the historical test—and SB749 flunks it. *See Bruen*, 597 U.S. at 21. But even if this Court conducted

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[1] Nor need the Court take it from the Governor; the record supporting this motion amply supports concluding that SB749 bans rifles, pistols, shotguns, and magazines in common use. *See* Ex.3 ¶¶5-7, 10-11; Ex.4 ¶4; Ex.5 ¶4; Affidavit of K. Kaya ¶¶3-5 (Ex.6); Affidavit of T. Dickson ¶¶3-9 (Ex.7); Affidavit of C. Patrick ¶¶4-5 (Ex.8); Affidavit of S. Thomas ¶¶5-8 (Ex.9); Affidavit of J. Santoro ¶¶3-4 (Ex.10).

[2] The Second Amendment is not the only provision of the U.S. Constitution that SB749 flouts: By using a vague, catchall category to broaden the scope of prohibited semiautomatic shotguns, SB749 also runs afoul of the Fourteenth Amendment. *See* Compl. ¶¶80-84.

the *Bruen* analysis anew, it would reach the same conclusion. Modern firearm regulations are permissible only if consistent with "the historical tradition that delimits the outer bounds of the right to keep and bear arms." *Id.* at 19. Once a plaintiff shows that a state regulation prevents him or her from engaging in arms-bearing conduct, the state "must affirmatively prove that its firearms regulation is part of th[at] historical tradition." *Id.* To carry that burden, the state must come forward with "well-established and representative historical analogue[s]"—in other words, not "outliers," *id.* at 30 (emphasis omitted)—that restricted arms-bearing conduct "for similar reasons" (i.e., "to address [the] particular" public policy "problem[]") and to a similar "extent" as "was done at the founding," *United States v. Rahimi*, 602 U.S. 680, 692 (2024); *see* Compl. ¶52.

Those principles make this an exceptionally easy case. Firearms capable of firing more than 15 shots before reloading predate the Revolution, and semiautomatic firearms were ubiquitous by the time the Wright Brothers flew. Yet restrictions either on them or on the detachable magazines they utilized remained virtually unheard of until after the Berlin Wall fell. Indeed, the historical record is so one-sided that Plaintiffs would prevail even if *they* bore the burden of proving that SB749 is *not* consistent with history. In addition to being only slightly older than the Backstreet Boys, even the most generous survey suggests that only ten states have enacted similar "assault firearm" bans—making such policies outliers even today. *See* Everytown Rsch. & Pol'y, *Which States Prohibit Assault Weapons?* (Jan. 14, 2026), https://perma.cc/CP2K-764S; *see also* Compl. ¶54 (citing Governor Youngkin's assessment that bills similar to SB749 violated the Constitution by "prohibiting a broad category of firearms widely embraced for lawful purposes").

3. To be sure, not every court to confront similar laws has agreed with the above analysis. But the opinions upholding laws similar to SB749—in addition to being non-binding—have nothing to recommend them. That is most clearly true closest to home. The Fourth Circuit

dismissed *Heller*'s and *Bruen*'s "common use" test as an "ill-conceived popularity test" and "trivial counting exercise," and instead held that, if an arm would be "most useful in military service"—an entirely eye-of-the-beholder category that, according to the Fourth Circuit, includes modern sporting rifles[3]—then it falls "outside the ambit of the Second Amendment" entirely. *Bianchi v. Brown*, 111 F.4th 438, 459-60 (4th Cir. 2024) (en banc) (emphasis omitted); *see Bevis v. City of Naperville*, 85 F.4th 1175, 1195-97 (7th Cir. 2023) (similar); *cf. Duncan v. Bonta*, 133 F.4th 852, 867-68 (9th Cir. 2025) (en banc) (deeming over-ten-round magazines to be mere "accoutrements" rather than "arms," on the theory that no firearm *requires* an over-ten-round magazine specifically). Under that (il)logic, the firearm the Supreme Court unanimously identified as "the most popular rifle in the country," *Smith & Wesson*, 605 U.S. at 297, is not actually an "arm" at all—even though millions of law-abiding Americans (including many Virginians) commonly own it for self-defense, hunting, and recreational target shooting. *See Bianchi*, 111 F.4th at 518-19 (Richardson, J., dissenting) (pointing this out). In reaching that startling conclusion, the Fourth Circuit not only reanimated the same interest balancing that *Bruen* interred, but did so overtly, asserting that the Second Amendment empowers states to engage in "careful interest balancing between individual self-defense and societal order." *Id.* at 460 (majority opinion). That is exactly backwards. "The Second Amendment 'is the very *product* of an interest balancing by the people,' and it 'surely elevates above all other interests the right of law-abiding, responsible citizens to use arms' for self-defense." *Bruen*, 597 U.S. at 26 (emphasis original); *see also* Compl. ¶55.

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[3] That conclusion is indefensible for a number of reasons, not least that modern sporting rifles have virtually never been used in military service, and no military in the world currently issues them—precisely because they lack fully automatic capability. *See* Johnson et al., *supra*, at 1968 (3d ed.) (2024 Supp.).

In short, whatever lower courts may have said, the United States Supreme Court has clearly spoken on the unconstitutionality of bans like this one. And its pronouncements on the meaning of the U.S. Constitution are binding. SB749 violates the Second Amendment.

B. SB749 Violates Article I, §13 of the Virginia Constitution.

"Even when principles of federal and state constitutional law share common ground, there is 'no good reason not to look first to Virginia's Constitution for the safeguards of the fundamental rights of Virginians.'" *McKeithen v. City of Richmond*, 302 Va. 422, 440 n.7 (2023). And "state courts are absolutely free to interpret state constitutional provisions to accord greater protection" than federal-court interpretations of "similar provisions of the United States Constitution." *Arizona v. Evans*, 514 U.S. 1, 8 (1995); *accord Vlaming v. W. Point Sch. Bd.*, 302 Va. 504, 563-65 (2023). "If, upon a careful inquiry, some of the clauses of [Virginia's] Declaration of Rights are found to offer more protection than the protections found in the Constitution of the United States," then courts must "honor the original public meaning of those provisions." *Palmer v. Atl. Coast Pipeline, LLC*, 293 Va. 573, 587 (2017) (McCullough, J., concurring).

Even if the Fourth Circuit's atextual and ahistorical test for the Second Amendment were remotely reconcilable with the Second Amendment—which it is not—it would be well-nigh impossible to square with Article I, §13 of the Virginia Constitution. That provision, which is entitled "Militia; standing armies; military subordinate to civil power," reads, 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.

That is as clear of a textual commitment as one will find to the idea that citizens have a right to bearable arms that are useful in military service and the feeding devices that are necessary for them

to operate as intended—a conclusion echoed by Attorney General Miyares, who reached that exact conclusion just four months ago after conducting an extensive historical analysis. *See* VA. Att'y Gen. Op. No. 26-001 at 3-5 (Jan. 16, 2026), 2026 WL 189947, at *3-4.[4]

The Supreme Court of Virginia has only decided one case involving Article I, §13: *DiGiacinto v. Rector & Visitors of George Mason University*, 281 Va. 127 (2011), which involved a challenge to a George Mason University regulation prohibiting weapons on university property. *See id.* at 130-31. The Court held that, "as relevant to" the question of whether a state can prohibit weapons "in sensitive places, such as schools and government buildings," "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." *Id.* at 133-35.

To the extent that Article I, §13 is co-extensive with the Second Amendment not only for sensitive-place laws, but also for laws banning arms in common use for self-defense, then SB749 violates Article I, §13 for all the same reasons that it violates the Second Amendment and more. Indeed, under a co-extensive reading, SB749 violates Article I, §13 *a fortiori*. Although the original version of Article I, §13 (written by George Mason himself) had always been understood to "guarantee[] the right of all citizens … to bear arms in defense of their way of life," 1 A.E. Dick Howard, *Commentaries on the Constitution of Virginia* 266 & 270 n.19 (1974), the language enshrining "a right to keep and bear arms" was not added until 1971. *See Stickley v. City of Winchester*, 2022 WL 16950948, at *7-9 (Winchester Cir. 2022). And the ratification debates from that constitutional revision show that those who enshrined it intended this newly express state right to permit no greater regulation of firearms than existed at the federal level as of 1969. *See id.*; *see also* Howard, *supra*, at 274-75. Of course, by 1969, not only were modern sporting rifles

[4] SB749 also violates Article XI, §4's right to hunt. *See* Compl. ¶¶75-78.

already widely bought and sold, but semiautomatic firearms and over-15-round magazines had been around for nearly a century. Yet there was no tradition of banning them (unlike their fully automatic cousins); the first law resembling SB749 did not come about for several more decades.

That said, even assuming that the Second Amendment were not broad enough to protect the arms that SB749 bans, Article I, §13 most certainly is. After all, both the text and all the history point to the conclusion that those who enshrined the right in the Virginia Constitution not only wanted Virginians to have firearms for self-defense, but wanted Virginians to be able to acquire bearable arms that are suitable for military service. *See* 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, 216, 226-27, 231 (2013); *see also Lynchburg Range & Training, LLC v. Northam*, 105 Va. Cir. 159, 161 (Lynchburg Cir. 2020) ("The operative clause provides the right to keep and bear arms, and the prefatory clause provides that the purpose of the right is to have a population trained with firearms in order to defend the Commonwealth"); Howard, *supra*, at 277 ("Section 13 has its roots in the prerevolutionary experience and speaks to the rights of the citizenry as a whole to prevent the seizure of militia arms"); Va. Att'y Gen. Op. No. 26-001, at 3-5. To be clear, there is no tradition anywhere of accepting restrictions on common arms just because those arms happen to be useful in military service. But in Virginia, the tradition is plainly one of *rejecting* such restrictions. *See* McCullough, *supra*, at 231; Bruce, *supra*, at 52-53; *see also supra* p.1. Article I, §13 protects Virginians right to acquire common arms even—or perhaps especially—if they are also suitable for military service.

II. The Remaining Injunction Factors Underscore The Need For Emergency Relief.

A. As the attached declarations make clear, Plaintiffs will suffer irreparable harm absent an injunction. For Black and Condon, the irreparable harm comes in the form of an immediate

and indefinite loss of their federal and state constitutional rights—an injury that circuit courts routinely deem (and the Commonwealth routinely concedes) to be *per se* irreparable. *E.g.*, *Patel v. Commonwealth*, 111 Va. Cir. 576, 580 n.4 (Norfolk. Cir. 2021); *Lynchburg Range & Training*, 105 Va. Cir. at 164; *see also Mirabelli v. Bonta*, 146 S.Ct. 797, 803 (2026). *See generally* Ex.1 ¶¶5-6, Ex.2 ¶¶5-6. For Clark Brothers, Optimus Arms, and Hexmag USA, that irreparable harm comes in the form of a permanent, ongoing—and, because of sovereign immunity, unrecoverable—loss of a sizable portion of their annual revenue, which (at least for Optimus) could result in the complete closure of the business, precipitating a significant loss of investment. *See* Ex.3 ¶¶5-9, Ex.4 ¶¶4-7; Ex.5 ¶¶4-8; *Ligon v. Cnty. of Goochland*, 279 Va. 312, 316 (2010).

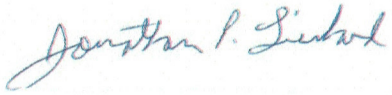
B. An injunction to protect constitutional rights is the exact opposite of an order "contrary to the public interest." Va. Sup. Ct. R. 3:26(d); *see, e.g.*, *Lucas v. Stimson*, 115 Va. Cir. 519, 543-44 (Fairfax Cir. 2025); *Young v. Northam*, 107 Va. Cir. 281, 289 (Culpeper Cir. 2021). To the contrary, when a constitutional right is at stake, the balance of hardships always tips in favor of enjoining a likely unconstitutional law. *See Commonwealth v. Sadler Bros. Oil Co.*, 2023 WL 9693656, at *5 n.5 (Va. 2023). That fits this case to a T, as SB749 is plainly unconstitutional, and the only "arguments of public policy" that this Court may weigh are those that come "from the constitution and laws." *Brown v. Speyers*, 61 Va. 296, 310-11 (1871). Regardless of how "altruistic and praiseworthy" the motives behind SB749 may be, that "impulse … must not cause" this Court "to hesitate in the preservation of the integrity of the Constitution, which is the foundation of our structure of government." *City of Hampton v. Ins. Co*, 177 Va. 494, 508 (1941).

CONCLUSION

The Court should preliminarily enjoin SB749's "assault firearm" ban, its associated definition of "assault firearm," and its "large capacity ammunition feeding device" ban.

Dated: May 19, 2026

Respectfully submitted,



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Certificate of Service

I HEREBY CERTIFY that on May 19, 2026, I caused a true and correct copy of the foregoing to be served on the following in the manner indicated below:

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