

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,

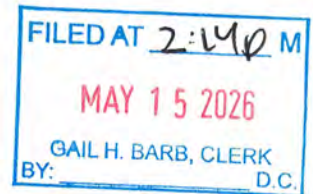
v.

SCOTT C. HOOK, in his official capacity as
the Commonwealth's Attorney for
Fauquier County,

Serve: Commonwealth's Attorney
29 Ashby Street, 3rd Floor
Warrenton, Virginia 20186

Defendant.

Civil Action No.: _____



VERIFIED COMPLAINT
FOR INJUNCTIVE RELIEF AND DECLARATORY JUDGMENT

Plaintiffs Eric Black, Britton Condon, Clark's Gun Shop, Inc. (d/b/a Clark Brothers), Optimus Arms, LLC, and Hexmag USA, LLC state the following complaint against the Commonwealth's Attorney for Fauquier County seeking declaratory relief under Virginia Code §8.01-184 and both preliminary and permanent injunctive relief under Virginia Code §8.01-186 and Supreme Court Rule 3:26.

INTRODUCTION

1. 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). So too when “Culpeper went out to Virginia to serve as its Governor”: “[T]here was to be found in the hands of private citizens a large quantity of arms of every sort.” *Id.* at 41, 52. “[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). And by the 1960s—just as Virginians were preparing to convene a new state constitutional convention—the Virginia 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). However well-intentioned “proposals of certain groups to regulate and restrict gun ownership” might be, the General Assembly did not equivocate: “[L]aws limiting the right to own and bear arms have never succeeded in deterring crime but have rather served” to “bring ... even greater tragedies” that “could well have been prevented had” the victim “had available to him” or her “a firearm for self defense.” *Id.* Several years later, 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—making a choice that “[t]o[k] certain policy choices off the table,” much as the framers of the U.S. Constitution did centuries earlier by ratifying the Second Amendment. *District of Columbia v. Heller*, 554 U.S. 570, 635-36 (2008).

2. Among the policy choices taken off the table by both the U.S. and the Virginia Constitution are laws “banning from the home ‘the most preferred firearm in the nation to ‘keep’ and use for protection of one’s home and family.’” *Id.* at 628-29. 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, 17 (2022).

3. But that is exactly what recently enacted Senate Bill 749 (“SB749”) seeks to do.

4. SB749 takes the radical step of banning the importation, sale, manufacture, purchase, or transfer of nearly every modern semiautomatic rifle from the mountains to the Tidewater—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); *see also Staples v. United States*, 511 U.S. 600, 612 (1994) (similar). 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 a wide swath of common shotguns, too, including all semiautomatic shotguns equipped with a thumbhole stock or pistol grip, features that are commonly found on shotguns intended for turkey hunting, target shooting, or home defense. SB749 likewise bans all semiautomatic shotguns with adjustable stocks—even though parents widely and responsibly use

such arms to introduce their children to bird hunting. *See Orvis, What Shotgun Is Best For Kids?* (2026), <https://perma.cc/CT6S-NG25>. And SB749 does not stop with the guns themselves: It also bans all “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, come standard-issue with countless semiautomatic firearms in common use, and are essential for those firearms to operate as intended.

5. Begrudgingly recognizing that there are *hundreds of millions* of such firearms and feeding devices currently lawfully owned and responsibly used by tens of millions of law-abiding Americans, including in every county in the Commonwealth, SB749 makes an exception for now-prohibited firearms and magazines lawfully purchased and possessed before July 1, 2026. But after July 1, 2026, the now-disfavored arms can no longer be bought or sold in Virginia—and those already owned cannot change hands except via transfers by inheritance or a handful of other narrow exceptions.

6. 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.

7. As its supporters have forthrightly admitted, one of SB749’s principal objects is to ban future sales of AR-style semiautomatic rifles. *See, e.g., Joe Dodson, Virginia Democrats Poised to Ban Assault Weapons Sales*, Courthouse News Service (Feb. 5, 2026), <https://perma.cc/Z7EW-7PTY>. No matter how the concept of “common” is defined, AR-style semiautomatic rifles plainly satisfy it: There are more AR-style semiautomatic rifles in private hands in America today than there are subscribers to the *New York Times*. “Odds are, if you walk up to a gun owner in Virginia, there’s a pretty good chance that they own at least one AR-style

rifle.” Avery Davis, *Virginia Assault Weapon Ban Awaits Governor’s Signature*, 29News (Mar. 10, 2026), <https://perma.cc/E8LP-RZM6>. And AR-style rifles are just the tip of the iceberg. SB749 covers countless rifles, pistols, and shotguns that law-abiding Virginians keep and bear each and every day for self-defense—not to mention to exercise their constitutionally protected right to hunt, *see* Va. Const. art. XI, §4.

8. Fauquier County residents Eric Black and Britton Condon are among those millions of Virginians. Since retiring from the U.S. Army after 20 years of dedicated and honorable service as a Green Beret, Black has purchased multiple arms that will now be subject to SB749’s draconian purchase and transfer restrictions, including from Plaintiff Clark Brothers, a federally licensed firearms retailer in Warrenton. So too for Condon—a decorated recreational shooter who has represented the United States in multiple international sporting clay competitions, in addition to winning Virginia and U.S. Open championships—who regularly buys arms for both lawful recreation and self-defense. But for SB749, they would buy more after July 1, 2026. But as long as SB749 remains in effect, they will be unable to do so, notwithstanding the considered choice by the framers of both the U.S. and Virginia Constitutions to “elevate[] above all other interests the right of law-abiding, responsible citizens to use arms in defense of hearth and home.” *Heller*, 554 U.S. at 635.

9. Because SB749 is fundamentally irreconcilable with those decisions to entrust law-abiding citizens with arms, the Court should promptly declare it unconstitutional and enter an order preliminarily and permanently enjoining its enforcement.

PARTIES

10. Eric Black is a law-abiding, adult resident of Midland, Virginia, in Fauquier County, who is legally eligible to possess and acquire firearms. He has purchased multiple

firearms in Fauquier County, both via in-person and online sales, including magazines manufactured by Hexmag USA, LLC and arms made by other manufacturers that going forward will be subject to SB749's purchase and transfer restrictions. But for SB749, Black would buy more of these now-restricted firearms as well as now-restricted magazines made by Hexmag USA, LLC (and others) from licensed dealers in Fauquier County after July 1, 2026.

11. Britton Condon is a law-abiding, adult resident of Upperville, Virginia, in Fauquier County, who is legally eligible to possess and acquire firearms. He has purchased multiple firearms in Fauquier County that going forward will be subject to SB749's purchase and transfer restrictions. But for SB749, Condon would buy more of these now-restricted arms after July 1, 2026.

12. Clark's Gun Shop, Inc. d/b/a Clark Brothers, is a firearms and sporting goods retailer organized under Virginia law with its principal place of business in Warrenton, Virginia, in Fauquier County. Clark Brothers imports and sells to law-abiding Virginia residents various firearm and magazine products subject to SB749's restrictions. These sales represent a sizable percentage of Clark Brothers' business volume, and but for the prohibitions of SB749, would continue to do so long after July 1, 2026.

13. Optimus Arms, LLC, is a federally licensed firearms manufacturer incorporated under Virginia law with its principal place of business in Virginia Beach, Virginia that specializes in manufacturing and selling firearms directly to Virginia residents. Roughly 75% of Optimus Arms, LLC's sales over the past two years is attributable to firearms subject to SB749's purchase and transfer restrictions. But for the prohibitions of SB749, Optimus Arms, LLC, would continue to manufacture these products for, and sell them to, Virginia residents.

14. Hexmag USA, LLC is a magazine manufacturer organized under Virginia law with its principal place of business in Virginia Beach, Virginia. Hexmag USA, LLC manufactures and distributes magazines subject to prohibition under SB749 both through direct sales to consumers, including Virginia residents, as well as through wholesalers and retailers which in turn sell those magazines to Virginia residents. But for SB749's prohibitions on the sale and transfer of such magazine products, Hexmag USA, LLC would continue to manufacture and sell these products, both directly to Virginia residents, and to retailers and wholesalers who intend to distribute them into the Virginia market.

15. Scott C. Hook is the Commonwealth's Attorney for Fauquier County. In that capacity, he serves as the County's chief law enforcement official and is responsible for "prosecut[ing] Class 1 ... misdemeanors." Va. Code §15.2-1627(B).

16. Pursuant to Supreme Court Rule 3:14A(b), Plaintiffs are filing a Notice of Constitutional Challenge contemporaneously with this Verified Complaint and will serve a copy of the notice and Verified Complaint on the Virginia Attorney General, who may intervene in this action within 30 days after being served with a copy of the notice.

JURISDICTION AND VENUE

17. This Court has subject-matter jurisdiction under Virginia Code §§8.01-184, 8.01-186, and 8.01-620, as well as Supreme Court Rule 3:26.

18. Venue is proper in this Court under Virginia Code §8.01-261(2), because this is an official-capacity action against an officer of the Commonwealth who maintains an official office in Fauquier County.

19. Venue is also proper in this Court under Virginia Code §8.01-261(15)(c), because this is a proceeding to award an injunction for an act to be apprehended in Fauquier County.

BACKGROUND

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

20. “[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.*

21. Like many other things, firearm technology evolved considerably during the Industrial Revolution, allowing mass production (and widespread acceptance) of high-capacity repeating firearms. Even supporters of modern policies like SB749 have no choice but to admit that, “in 1860,” “Oliver Winchester’s New Haven Arms Company” came out with “t[h]e ‘Henry’”—“named after Winchester’s brilliant gunmaker, Benjamin Tyler Henry”—“that could

fire sixteen rounds without reloading (one in the chamber and fifteen from an attached, tubular magazine).” Declaration of Brian DeLay ¶58, *Barnett v. Raoul*, No. 3:23-cv-209 (S.D. Ill. Mar. 2, 2023), ECF 37-13 (attached as Exhibit 1); *see also* Harold F. Williamson, *Winchester: The Gun That Won The West* 28-31 (1952). 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; *see* Louis A. Garavaglia & Charles G. Woman, *Firearms of the American West 1866-1894*, at 128 (1984); Ex.1 ¶58. Not content for Winchester to capture the entire market, the Evans Company soon began producing and selling thousands of repeating firearms holding 28 or 34 rounds in the 1870s. 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.* Even accounting for the need to reload, 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).

22. 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.” 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 “semiautomatic” 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.

23. “[S]emi-automatic firearms first started coming on the market in the 1890s.” 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.); see also David B. Kopel, *The History of Firearms Magazines and Magazine Prohibitions*, 78 Albany L. Rev. 849, 857 (2015).

24. 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. 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).

25. 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; Kopel, *supra*, at 859. 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.” Ex.1 ¶76; *see* Kopel, *supra*, at 864-67.

26. In fact, until California banned certain semiautomatic rifles in 1989, and New Jersey banned 15-round detachable box magazines in 1990, only a handful of jurisdictions had ever tried anything remotely like that, and those efforts were mostly short-lived. In 1927, Michigan

briefly prohibited “any machine gun or firearm which can be fired more than sixteen times without reloading,” before repealing the ban and replacing it with a law banning only fully automatic firearms a few decades later. Act of June 2, 1927, No. 372, §3, 1927 Mich. Public Acts 887, 888, *repealed by* Act of July 16, 1959, No. 175, sec. 1, §224, 1959 Mich. Pub. Acts 249, 250. Rhode Island likewise passed a law banning “any weapon which shoots more than twelve shots semi-automatically without re-loading,” but it too was repealed on a similar timetable. Act of Apr. 22, 1927, ch. 1052, §§1, 4, 1927 R.I. Acts & Resolves 256, 256-57, *repealed by* Firearms Act, ch. 278, sec. 1, §11-47-2, 1975 R.I. Pub. Laws 738, 738-39, 742; *see* Kopel, *supra*, at 865. And a 1932 D.C. law prohibited possession of firearms that “shoot[] automatically or semiautomatically more than twelve shots without reloading.” Act of July 8, 1932, Pub. L. No. 72-275, §§1, 14, 47 Stat. 650, 650, 654.¹

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

27. SB749 (and its House of Delegates equivalent, HB217) amends various existing provisions of the Virginia Code and adds three new brand-new sections—§§18.2-287.4:1, 18.2-308.1:9, and 18.2-309.1—“relating to purchase, sale, transfer, etc., of assault firearms and certain ammunition feeding devices.” The bills passed their respective legislative chamber and were signed by the Speaker of the House and the President of the Senate on March 13, 2026.

28. On April 11, 2026, Governor Spanberger returned the bills to the General Assembly with proposed amendments, correctly recognizing that the bills’ definition of “assault firearms”

¹ Although no other state banned weapons based on how many rounds they could fire without reloading, there was one outlier state—Ohio—that passed a law requiring a special permit for the possession or sale of a semiautomatic firearm with an ammunition capacity of greater than 18 rounds in 1933. Ohio raised the threshold to 32 rounds in 1971 before repealing the law entirely in 2014. *See* Kopel, *supra*, at 865.

swept in many firearms widely used for hunting and other lawful recreation. *See* Allison Mullet, *Gov. Spanberger Explains Assault Weapons Bill Amendments to Protect Hunting Guns*, ABC13 (Apr. 15, 2026), <https://perma.cc/LGU6-GP7U>. Notwithstanding that “clear” problem, *id.*, on April 22, 2026, both chambers quickly made equally clear that was by design, rejecting the Governor’s proposed amendments and returning the bills in their original form to the Governor’s desk. Notwithstanding the fact that the returned bills concededly ban “firearms frequently used for hunting,” Governor Spanberger nonetheless backed down and provided her signature on May 14, 2026. *See* Press Release (May 25, 2026), <https://perma.cc/A578-QEHH>. Under Virginia Code §1-214(A), the law will take effect on July 1, 2026. The enacted text is attached as Exhibit 2.

A. SB749 Bans “Assault Firearms.”

29. New §18.2-287.4:1 is the centerpiece of SB749’s “assault firearm” ban. It makes “[a]ny person who imports, sells, manufactures, purchases, or transfers an assault firearm” “guilty of a Class 1 misdemeanor.” Ex.2 at 1:36-37. 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; (viii) people can import an “assault firearm” lawfully purchased prior to July 1, 2026; or (ix) people can receive an “assault firearm” as a gift from a spouse, child,

parent, grandparent, or sibling who lawfully possessed the firearm before July 1, 2026. Ex.2 at 1:38-2:65.

30. As an additional part of this “assault firearm” ban, SB749 also amends preexisting Virginia Code §18.2-308.2:5 to make it doubly clear that “[n]o person shall sell an assault firearm ... for money, goods, services, or anything else of value,” and that “[a]ny person who willfully and intentionally (i) sells an assault firearm ... to another person or (ii) purchases an assault firearm ... from another person is guilty of a Class 1 misdemeanor.” Ex.2 at 10:555-59.

31. 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. Ex.2 at 3:139-40 (emphasis added).

B. SB749’s Definition of “Assault Firearm” Encompasses Virtually All Modern Semiautomatic Firearms.

32. SB749 adopts a new definition of “assault firearm” that sweeps in all manner of common semiautomatic rifles, pistols, and shotguns.

33. Before SB749 came around, Virginia Code §18.2-308.2:2 defined “assault firearm” as a “semi-automatic center-fire rifle or pistol which expels single or multiple projectiles by action of an explosion of a combustible material and is equipped at the time of the offense with a magazine which will hold more than 20 rounds of ammunition or designed by the manufacturer to accommodate a silencer or equipped with a folding stock.” Ex.2 at 5:289-92. That definition was already quite broad. As explained, semiautomatic rifles are widely used by tens of millions of Americans for hunting and self-defense, and they “traditionally have been widely accepted as

lawful,” *Staples*, 511 U.S. at 612, and semiautomatic pistols are “the weapons most commonly used today for self-defense,” *Caetano*, 577 U.S. at 416-17 (Alito, J., concurring in the judgment). But, in recognition of the Nation’s and Commonwealth’s historical tradition of respecting the rights of law-abiding citizens to defend themselves with the common arms of the day, the prior version of the “assault firearm” statute did not prohibit law-abiding adult citizens from acquiring or possessing firearms that fell into that category. Instead, the pre-existing §18.2-308.2:2(B)(1) prohibited dealers from selling, renting, trading, or transferring “any assault firearm to any person who is not a citizen of the United States or who is not a person lawfully admitted for permanent residence.” Ex.2 at 4:215-17. And the pre-existing §18.2-308.7 made it unlawful “for any person under 18 years of age to knowingly and intentionally possess or transport a[n] ... assault firearm.” Ex.2 at 10:562-63.

34. SB749 radically changes that dynamic twice over—first by banning the sale, purchase, and transfer of “assault firearms” to or by virtually anyone, and then by stretching the definition of “assault firearm” from just a few lines to seven numbered paragraphs that encompass many of the most popular and widely used firearms on the market today, whether or not they are “equipped at the time of the offense with a magazine which will hold more than 20 rounds of ammunition.” Under the new definition:

Assault firearm means:

1. A semi-automatic center-fire rifle or pistol with a fixed magazine capacity in excess of 15 rounds;
2. A semi-automatic center-fire rifle that has the ability to accept a detachable magazine, not including an attached tubular device designed to accept and capable of operating only with .22 caliber rimfire ammunition, and that has one or more of the following characteristics:
 - i. a folding, telescoping, or collapsible stock;
 - ii. a thumbhole stock or pistol grip that protrudes conspicuously beneath the action of the rifle;

- iii. a second handgrip or a protruding grip that can be held by the non-trigger hand;
 - iv. a grenade launcher; or
 - v. a threaded barrel capable of accepting (a) a muzzle brake, (b) a muzzle compensator, (c) a sound suppressor, or (d) a flash suppressor;
3. A semi-automatic center-fire pistol that has two or more of the following characteristics:
- i. a second handgrip or a protruding grip that can be held by the non-trigger hand;
 - ii. the capacity to accept a magazine that attaches to the pistol outside of the pistol grip;
 - iii. a shroud that is attached to, or partially or completely encircles, the barrel and that permits the shooter to hold the pistol with the non-trigger hand without being burned;
 - iv. a threaded barrel capable of accepting (a) a sound suppressor, (b) a flash suppressor, (c) a barrel extender, or (d) a forward handgrip; or
 - v. a buffer tube, arm brace, or other part that protrudes horizontally behind the pistol grip and is designed or redesigned to allow or facilitate the firing of a firearm from the shoulder;
4. A semi-automatic shotgun that expels single or multiple projectiles by action of an explosion of a combustible material that has one of the following characteristics:
- i. a folding, telescoping, or collapsible stock;
 - ii. a thumbhole stock or pistol grip that protrudes conspicuously beneath the action of the shotgun;
 - iii. the ability to accept a detachable magazine;
 - iv. a fixed magazine capacity in excess of 15 rounds; or
 - v. any characteristic of like kind as enumerated in clauses (i) through (iv);
5. A shotgun with a revolving cylinder;
6. A firearm that has the capacity to accept a belt ammunition feeding device; or
7. A firearm that has been modified to be operable as an assault firearm as described in subdivisions 1 through 6.

Ex.2 at 5:288-6:318.

35. To level set, that definition is principally concerned not with uncommon fully automatic firearms, but rather with semiautomatic firearms. *See supra* ¶22 (explaining the

distinction). The vast majority of the most popular firearms on the market today are semiautomatic.

36. To further level set, the first three numbered paragraphs cover “center-fire rifles and pistols,” which likewise are exceptionally common. Although the second paragraph contains a narrow exclusion for semiautomatic rifles that accept only .22 caliber rimfire ammunition, that exclusion does not meaningfully confine its scope. With rimfire ammunition, the firing pin hits the rim of the cartridge; with centerfire ammunition, the firing pin hits the center of the cartridge. “Rimfire rounds are generally less expensive and are excellent for target practice or small-game hunting” (think squirrels or rabbits). *Rimfire vs Centerfire Ammunition: Is Centerfire Ammo Better?*, Valortec (Oct. 4, 2024), <https://perma.cc/23TN-H323>. But “centerfire rounds are more reliable, especially regarding ignition and consistency, making them the preferred choice for defensive and hunting applications,” including deer hunting. *Id.* In fact, Virginia’s Department of Wildlife Resources forbids hunting deer with rifles and pistols that use anything less than .23 caliber. *See* Va. Dep’t Wildlife Res., *Legal Use of Firearms and Archery Tackle* (2026), <https://perma.cc/992U-CRD6>. So excluding .22 caliber rimfire rifles from the new ban makes little practical difference when it comes to the exercise of constitutional rights.

37. As for the rifle-specific component of the definition (paragraph 2), while it covers only semiautomatic center-fire rifles with the ability to accept a detachable magazine and one or more enumerated features, that too does nothing to meaningfully confine its scope, as virtually every semiautomatic rifle in common use for self-defense and/or hunting today falls into that capacious category. That includes, most notably, what is by far the most popular style of rifle

today: the “modern sporting rifle,” which includes the AR-15 and its many variants, known collectively as “AR-style rifles” or “AR-platform rifles.”²

38. 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 (“The AR-15 is the most popular rifle in the country.”). In recent years, they have accounted for “one-half of all rifles ... produced.” *Miller*, 542 F.Supp.3d at 1022. There are over 32 million of them in circulation today in the United States, with nearly 1.4 million entering the market in 2023 alone. Nat’l Shooting Sports Found., *NSSF Releases Most Recent Firearm Production Figures* (Jan. 15, 2026), <https://perma.cc/4Y7W-T4TM>. To put those numbers in perspective, they make modern sporting rifles considerably more common than America’s most popular automobile, the Ford F-150, 800,000 of which were sold in 2025. *See Ford HQ, 49 Years of F-Series Truck Leadership is Latest Mile Marker on a Long Journey* (Dec. 29, 2025), <https://perma.cc/W379-S7R5>; Brett Foote, *There are Currently 16.1 Million Ford F-Series Pickups on U.S. Roads*, Ford Authority (Apr. 9, 2021), <https://perma.cc/S32Y-6F6T> (16.1 million F-150s on the road as of 2021). Indeed, there are more modern sporting rifles in circulation than there are subscribers to the *New York Times*. *See The Times’s Profit Jumps With 460,000 More Subscribers*, N.Y. Times (Nov. 5, 2025), <https://perma.cc/NBQ8-D3JN> (“The Times now has 12.33 million total subscribers to all of its products. It has said it is aiming for 15 million by the end of 2027.”). Millions of people have purchased a modern sporting rifle for personal protection purposes; millions more for hunting; and millions more for target shooting and other lawful recreation. *Miller*, 542 F.Supp.3d at 1022. SB749 renders all of that common (and constitutionally protected) conduct a crime.

² “AR” stands for ArmaLite Rifle; ArmaLite was the company that originally designed this firearm, which today is an open-source platform produced by various entities. AR does not stand for “assault rifle.” *See Johnson et al., supra*, at 385 (3d ed.) (2024 Supp.).

39. Modern sporting rifles come standard-issue with a detachable magazine (usually one with a capacity of 20 or 30 rounds, *see supra* ¶25), and they all have at least one of the features Virginia bans, and often two or more. That should come as little surprise; many of the prohibited characteristics are specifically designed to make firearms safer and/or more accessible for people with physical limitations, which is precisely why law-abiding citizens find them so useful. For example:

- Modern sporting rifles virtually always have a pistol grip, because they improve accuracy and reduce the risk of stray shots by helping to stabilize the firearm while firing from the shoulder. *See* David B. Kopel, *Rational Basis Analysis of “Assault Weapon” Prohibition*, 20 J. Contemp. L. 381, 396 (1994); *Kolbe v. Hogan*, 849 F.3d 114, 159 (4th Cir. 2017) (en banc) (Traxler, J., dissenting) (“By holding the pistol grip, the shooter keeps the barrel from rising after the first shot, and thereby stays on target for a follow-up shot. The defensive application is obvious, as is the public safety advantage in preventing stray shots.”). Likewise, such firearms may often be equipped with thumbhole stocks which serve a similar purpose. (A “stock” is the part of a long gun to which the barrel, action, and firing mechanism are attached, and that allows the user to firmly brace the firearm and more easily aim with stability. *See* Johnson et al., *supra*, at 1970 (3d ed.) (2024 Supp.).)
- Modern sporting rifles are likewise routinely fitted with folding, telescoping, and or collapsible stocks. Folding stocks make a firearm more maneuverable in confined spaces and facilitate safe storage in easily accessible spaces. Telescoping and collapsible stocks allow a firearm to be better fitted to an individual shooter’s arm length, thereby enhancing the ability to use the firearm safely and effectively, particularly if multiple people of different sizes may need to use the same rifle.

- Threaded barrels make it possible to attach various devices that are not only legal to possess and use in Virginia (and dozens of other states), but that enhance a firearm’s safety, comfort, and accessibility to boot:
 - Muzzle brakes have long been common on semiautomatic rifles, as they “reduce[] the gun’s recoil and make[] it easier to control.” Kopel, *Rational*, at 396.
 - Sound suppressors likewise provide users with multiple safety benefits—protecting not only their own hearing, but the hearing of others in their vicinity. See Am. Acad. of Otolaryngology, *Suppressors for Hearing Preservation* (Nov. 18, 2024), <https://perma.cc/3EC7-7EJC> (citing research by the CDC).
 - So too with flash suppressors, which prevent users from being blinded in low lighting conditions by the sudden flash of light caused by the explosion of gunpowder when a user fires a shot. Flash suppressors may also reduce recoil and muzzle movement, increasing accuracy and making the firearm less painful to use—crucial in home-defense situations. Kopel, *Rational*, at 397-99; see also Wm. Alan Bartley & Geoffrey Fain Williams, *What is an Assault Weapon? Definitions, Attributes, and Implications Regarding Legislation*, 57 Gonz. L. Rev. 515, 524 (2022) (collecting statistics showing that “threaded barrels/flash suppressors are ... common features”).

None of the common features discussed above increases a firearm’s rate of fire, or its capacity for firepower, or its ability to inflict lethal force. They just make the rifle easier for someone to use safely and accurately, rendering them the kinds of features that one would expect the state to want law-abiding citizens to be able to access.

40. When it comes to pistols, the definition’s third numbered paragraph is similar to the definition’s approach to rifles, covering any semiautomatic pistol with two or more prohibited characteristics. Many of those characteristics mirror the features singled out for rifles, and those that do not are likewise designed to make pistols safer and/or more accessible for people with physical limitations. For instance, as the federal government recognized under President Biden, arm braces have gained considerable popularity in recent years because they “help a shooter ‘stabilize’ his or her arm to support single-handed firing,” thereby “facilitat[ing] one-handed firing” of pistols by “those with limited strength or mobility due to a disability,” which was actually the impetus behind their design. 86 Fed. Reg. 30,826, 30,827 (June 10, 2021); *see also supra* ¶39 (discussing safety benefits of grips and flash suppressors); Andrew Koski, *Muzzle Brake vs. Barrel Shroud: An Overview of Purpose and Application*, Tactical Transition (Oct. 2, 2023), <https://perma.cc/56SE-CURP> (noting that muzzle brakes and barrel shrouds make firearms safer to shoot, and the latter also allows for safety-enhancing attachments like sights or lights). This part of the definition also operates to ban popular pistol versions of modern sporting rifles, which are often used by disabled shooters in connection with accessories like muzzle brakes and arm braces.

41. Pistols meeting SB749’s 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* 86 Fed. Reg. at 30,831 (describing “AR-type pistols” as “popular large handgun[s]” among law-abiding Americans). Indeed, semiautomatic pistols meeting this definition are so common that they are “frequently referred to simply as *pistols*,” Johnson et al., *supra* at 1985 (3d ed.) (2024 Supp.), and that includes pistols that have features like threaded

barrels and “magazines that are inserted elsewhere” than “the gun’s grip,” *id.*; *see also supra* ¶23 (discussing the “broomhandle” Mauser, which had a magazine inserted not in the grip).

42. 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>; *see also* Nat’l Shooting Sports Found., *Firearm Production Figures supra* (roughly 1.5 million shotguns entered the American market in 2023). “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, *supra*.

43. Still worse, the fourth numbered paragraph leaves its precise scope open to interpretation by sweeping in any semiautomatic shotgun that has “any characteristic” “*like*” the

other four characteristics it “enumerate[s].” Ex.2 at 6:309-12 (emphasis added). What that open-ended catchall means for Virginians trying to conform their conduct to the law is anyone’s guess—especially because the enumerated characteristics lack any semblance of a unifying theme: Some characteristics make a firearm safer or more accessible generally; some characteristics enhance a firearm’s utility for hunting or self-defense applications; others make the firearm easier to store; still others make a firearm more adaptable for use by multiple (or growing) users. *See supra* ¶¶39, 42. Consider the Mossberg 940 Pro Tactical Holosun Combo—another one of *Outdoor Life*’s “10 Best Semi-Auto Shotguns for Every Budget and Purpose.” It does not appear to have any of the four enumerated characteristics, but it does “come[] packed with features, including a cool-looking heat shield, multiple M-Lok slots, QD ports, a Vang Comp 6-shell carrier, and adjustable length of pull.” Robinson, *supra*. Can Virginians lawfully buy this firearm after July 1? Can Virginia businesses lawfully sell it? SB749 gives no meaningful guidance, leaving it to ordinary citizens to calibrate how much risk they are willing to tolerate—even though “fundamental principles of due process ... mandate that no individual be forced to speculate, at peril of indictment, whether his conduct is prohibited.” *Dunn v. United States*, 442 U.S. 100, 112 (1979).

C. SB749 Bans “Large Capacity Ammunition Feeding Devices.”

44. 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.

45. New Virginia Code §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. 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 but does not include an attached tubular device designed to accept and capable of operating only with .22 caliber rimfire ammunition.” Ex.2 at 10:586-89.

46. Just as carving out .22 caliber rimfire ammunition does not meaningfully constrain this definition, *see supra* ¶36, 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, *History*, 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* ¶25. 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>.

47. In short, there are countless over-15-round magazines in common use today, including in every county of the Commonwealth. *See also* Nat’l Shooting Sports Found., *Detachable Magazine Report (1990-2021)*, at 3-4, <https://perma.cc/N4HK-BNEF> (“conservative[ly] estimat[ing]” that there are over 448 million 30+ capacity rifle magazines in private hands, including over 34 million that came standard-issue “‘in the box’ with each newly

manufactured firearm”). Many of today’s most commonly used firearms are designed to operate—and come standard—with them. *See id.* (noting that many of the estimated 448 million 30+ capacity rifle magazines are “provided ‘in the box’ with each newly manufactured firearm”).

48. Moreover, in addition to being necessary for many ubiquitous firearms to operate as intended in hunting applications, over-15-round magazines are themselves the preferred option for many self-defense applications. *See, e.g.,* Nikki Goesser, *Ten Cases Over the Last Few Years Where People Have Had to Fire Ten or More Shots in Self Defense*, Crime Prevention Resource Center (Oct. 22, 2020), <https://perma.cc/3VM8-L4FR> (collecting “[non]exhaustive” examples of instances “where law-abiding citizens ... fired at least 10 shots,” and often “dozens,” “in self-defense”); Gus G. Sentementes & Julie Bykowicz, *Documents Detail Cross Keys Shooting*, Balt. Sun (Mar. 21, 2006), <https://perma.cc/P6SE-UP3A> (“gas station owner” defended himself and his business with his “9 mm Glock semiautomatic pistol” by firing “at his [three] assailants 16 times”); *Gun Shop Owner Shoots, Kills Man During Attempted Robbery*, WIS TV (Aug. 9, 2012), <https://perma.cc/AML9-BX8T> (firearm dealer defended himself and his property with AR-15 by “empt[ying] a 30 round magazine before retreating ... to get more ammunition”); *Jewelry Store Burglarized, Scene of Deadly 1994 Robbery Attempt*, nbc12.com (2012), <https://perma.cc/MQM5-42H4> (describing “hail of bullets from employees and owners of [a] store” that were used in defense of self and property); Jacob Sullum, *The Threat Posed by Gun Magazine Limits*, Reason (Jan. 16, 2013), <https://perma.cc/EKV5-7BGC> (noting “various scenarios, including riots, home invasions, and public attacks by multiple aggressors, in which a so-called large-capacity magazine can make a crucial difference,” and highlighting the “shopkeepers in Koreatown” during the LA riots who had “‘large-capacity’ magazines to defend themselves and their property against rampaging mobs”).

III. SB749 Is Unconstitutional.

A. SB749 Violates the U.S. Constitution.

49. The United States Supreme Court has said 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 bans modern sporting rifles, which the Supreme Court unanimously agreed just this past year are “the most popular rifle in the country,” along with common pistols and shotguns that—as Governor Spanberger herself acknowledged—are widely used for recreation, hunting, and home-defense. *Smith & Wesson*, 605 U.S. at 297; *see supra* ¶28. That makes SB749 a nonstarter. *See Snope v. Brown*, 145 S.Ct. 1534 (2025) (Kavanaugh, J., respecting denial of certiorari) (casting doubt on the constitutionality of laws banning modern sporting rifles). Simply put, efforts to bar the people from keeping or bearing arms that are in common use for lawful purposes “fail constitutional muster” “[u]nder any ... standard[.]” *Heller*, 554 U.S. at 628-29.³

50. 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. After all, “without bullets, the right to bear arms would be meaningless.” *Jackson v. City & Cnty. of San Francisco*, 746 F.3d 953, 967 (9th Cir. 2014), *abrogated on other grounds by Bruen*, 597 U.S. 1. And as the phrase “feeding device” nicely illustrates, magazines are not passive

³ And as explained *infra* ¶¶80-84, 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’s Due Process Clause. *See also infra* ¶¶86-87 (same for Virginia Constitution’s Due Process Clause).

holders of ammunition, like cartridge boxes of yore; they are integral 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* ¶¶46-47. SB749’s effort to outlaw over-15-round magazines is thus unconstitutional as well. See *Hanson v. District of Columbia*, 120 F.4th 223, 232 (D.C. Cir. 2024); *Ass’n of N.J. Rifle & Pistol Clubs, Inc. v. Att’y Gen. N.J.*, 910 F.3d 106, 116-17 (3d Cir. 2018); see also *Ocean State Tactical, LLC v. Rhode Island*, 95 F.4th 38, 43 (1st Cir. 2024) (assuming without deciding that magazines “are ‘arms’ within the scope of the Second Amendment”).

51. Because the United States Supreme Court has already held that bans on common arms violate the Second Amendment, that is the end of the analysis; when it comes to what arms the people have a right to keep and bear, common use *is* the historical test—and SB749 flunks it. See *Bruen*, 597 U.S. at 21. But even if this Court were to conduct the *Bruen* analysis anew, it would reach the same conclusion. Modern firearm regulations are permissible only if they are 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).

52. In conducting this historical inquiry, “not all history is created equal.” *Bruen*, 597 U.S. at 34. In particular, “post-Civil War discussions of the right to keep and bear arms ... do not provide as much insight into” historically accepted limits on the right to keep and bear arms “as earlier sources.” *Id.* at 36. Although these “belated innovations of the mid- to late-19th century” can “confirm[.]” original meaning, “to the extent [this] later history contradicts” what was accepted at the time of the founding (or, at the absolute latest, the passage of the Fourteenth Amendment), then the prior history controls. *Id.* at 36-38.

53. Those principles make this an exceptionally easy case. Firearms capable of firing more than 15 shots before reloading predate the Revolutionary War, and semiautomatic firearms were ubiquitous by the time the Wright Brothers flew at Kitty Hawk. Yet restrictions either on them or on the detachable magazines they utilized remained virtually unheard of until after the fall of the Berlin Wall. *See supra* ¶¶20-26. 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 historical tradition. 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>.

54. The Court need not take that from Plaintiffs. In both 2024 and 2025, members of the Virginia legislature introduced similar proposals to broaden the definition of “assault firearms” and enact new restrictions on their transfer—though both proposals stopped considerably short of

SB749. See HB2 (2024), *available at* <https://perma.cc/U4FY-W3NN>; HB1607 (2025), *available at* <https://perma.cc/PA9Q-DHUH>. Both times, Governor Youngkin vetoed the proposed legislation. In 2024, he explained that “[t]he Constitution precludes the Commonwealth from prohibiting a broad category of firearms widely embraced for lawful purposes.” 2024 Session, HB2—Governor’s Veto, *available at* <https://perma.cc/B6G6-YHD6>. Although “profoundly troubled by” “[t]he pain and sorrow inflicted by criminals with heinous intentions,” Governor Youngkin encouraged the legislature to turn its attention away from unconstitutional efforts to “ban[] most contemporary semiautomatic firearms and specific ammunition-feeding devices,” and towards “[e]nhancing penalties for crimes committed with firearms” and making “substantial investments in” Virginia’s “behavioral health system,” a “twofold approach” offering “a real solution without creating outcomes that would affect law-abiding citizens and violating our constitutional rights.” *Id.* When the legislature showed no interest in any such solution and instead chose to reenact the same exact bill one year later, Governor Youngkin vetoed it again, explaining that nothing “has ... changed since ... last year”: “The Constitution [still] precludes the Commonwealth from prohibiting a broad category of firearms widely embraced for lawful purposes, such as self-defense.” 2025 Session, HB1607—Governor’s Veto, *available at* <https://perma.cc/LDH6-GEVW>. The same remains true today.

55. To be sure, not every court has agreed. But the opinions upholding laws similar to SB749—in addition to being non-binding—have nothing to recommend them. The Ninth Circuit begrudgingly acknowledged in the abstract that “the Second Amendment’s text necessarily encompasses a right to possess a magazine for firearms that require one,” but it deemed over-ten-round magazines to be a mere “accoutrement” rather than “arms,” on the theory that no firearm *requires* an over-ten-round magazine specifically. *Duncan v. Bonta*, 133 F.4th 852, 867-68 (9th

Cir. 2025) (en banc). But *Bruen* could not have been clearer that “the Second Amendment’s definition of ‘arms’ ... covers modern instruments that facilitate armed self-defense.” 597 U.S. at 28. And something that facilitates armed self-defense in Size Small does not cease accomplishing that end in Size Medium or Size Large. If anything, having more rounds at the ready *better* facilitates a citizen’s ability to defend herself in case of a confrontation—regardless of whether she ends up needing to expend every (or any) round. *Cf. Miller*, 542 F.Supp.3d at 1034 (recounting testimony of man who was able to stop a knife attack by merely showing his AR-15: “It’s just a bigger gun. I think a little bit more than an intimidation factor definitely played a part in him actually stopping.”); *see also supra* ¶48. More fundamentally, the Ninth Circuit’s what-do-you-really-need view of the Second Amendment disrespects the framers’ choice to enshrine the Second Amendment in the Constitution. “The very enumeration of the right takes out of the hands of government—even the Third Branch of Government—the power to decide on a case-by-case basis whether the right is *really worth* insisting upon.” *Heller*, 554 U.S. at 634.

56. The Fourth Circuit has struck out in yet a different (mis)direction—and along the way, dug itself a veritable Gehenna. That court 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 rifles⁴—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)

⁴ 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.).

(similar). Under that (il)logic, the firearm that 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).

B. SB749 Violates the Virginia Constitution.

57. “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).

58. Even if the Ninth and Fourth Circuit’s atextual and ahistorical tests were remotely reconcilable with the Second Amendment—which they are not—they 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.⁵

59. 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.

60. 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. *See supra* ¶¶49-56. Indeed, under a co-extensive reading, SB749 violates Article I, §13 a

⁵ Lest there be any doubt, the Virginia Constitution separately guarantees a right to a firearm for hunting purposes in Article XI, §4. *See infra* ¶¶75-78.

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 actual language enshrining “a right to keep and bear arms” was not added to Article I, §13 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 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 state law resembling SB749 did not come about for several more decades. *See supra* ¶¶23-26.

61. 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, at *2 (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 (explaining that “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”). To be clear, there is no historical tradition anywhere of accepting restrictions on the right to bear arms in common use 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; *see also supra* ¶1. Article I, §13 protects law-abiding Virginians right to acquire common arms even if—or perhaps especially if—they are also suitable for military service.

CLAIMS FOR RELIEF

Count 1: Violation of U.S. Constitution, Second Amendment

62. Plaintiffs re-allege and incorporate by reference the preceding paragraphs as though fully set out herein.

63. The Second Amendment of the U.S. Constitution provides: “A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.”

64. Eric Black and Britton Condon are part of “the people” whom the Second Amendment protects, as are the customers served by Clark Brothers, Optimus Arms, LLC, and Hexmag USA, LLC.

65. The firearms covered by SB749’s definition of “assault firearm” are “arms” covered by the Second Amendment.

66. The magazines covered by SB749’s definition of “large capacity ammunition feeding devices” are “arms” covered by the Second Amendment.

67. The arms covered by SB749’s definition of “assault firearm” are in common use for self-defense, hunting, target shooting, and other lawful purposes.

68. The arms covered by SB749's definition of "large capacity ammunition feeding devices" are in common use for self-defense, hunting, target shooting, and other lawful purposes.

69. Because SB749 precludes law-abiding Virginians from manufacturing, importing, buying, selling, bartering, or transferring constitutionally protected arms that are in common use for self-defense, it is unconstitutional. *See Heller*, 554 U.S. at 628-29. Indeed, nothing in our Nation's historical tradition of firearm regulation supports the sweeping prohibitions that SB749 imposes.

Count 2: Violation of Virginia Constitution, Article I, §13

70. Plaintiffs re-allege and incorporate by reference the preceding paragraphs as though fully set out herein.

71. Article I of the Virginia Constitution comprises Virginia's Bill of Rights. Section 13 of Article I is entitled "Militia; standing armies; military subordinate to civil power." Section 13 provides: "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."

72. To the extent Article I, §13 is coextensive with the Second Amendment, SB749 violates it for the same reasons explained above. *See supra* ¶¶63-69.

73. But to the extent the Second Amendment is not broad enough to foreclose laws like SB749, then Article I, §13 is, as it protects the right of law-abiding Virginians to keep and bear arms covered by SB749's definitions of "assault firearm" and "large capacity ammunition feeding devices."

Count 3: Violation of Virginia Constitution, Article XI, §4

74. Plaintiffs re-allege and incorporate by reference the preceding paragraphs as though fully set out herein.

75. Article XI, Section 4 of the Virginia Constitution is entitled “Right of the people to hunt, fish, and harvest game.” Section 4 provides: “The people have a right to hunt, fish, and harvest game, subject to such regulations and restrictions as the General Assembly may prescribe by general law.”

76. Added to the Virginia Constitution by popular vote in 2000, Article XI, Section 4 reflects Virginians’ long and proud tradition of hunting, which predates the Revolution. *See, e.g.*, 1 Henry S. Randall, *The Life of Thomas Jefferson* 15 (1858) (explaining how a teenaged Thomas Jefferson recreated by “press[ing] his way with unflagging foot through the rocky summits of the contiguous hills in pursuit of deer and wild turkeys”). Before the founding, firearms were already the implement of choice for taking wild game, supplanting more primitive methods like archery or spearing. *See generally* Stephen P. Halbrook, *The Constitutional Right to Hunt: New Recognition of an Old Liberty in Virginia*, 19 Wm. & Mary Bill Rts. J. 197 (2010). “A passionate love of hunting ... induced the colonists of that day to purchase fowling pieces, which, in an emergency, could be turned against an enemy.” Bruce, *supra*, at 52-53.

77. Neither the Virginia Supreme Court nor the Virginia Court of Appeals has interpreted Article XI, §4. But the Virginia Supreme Court has held in other contexts that Virginia’s Constitution protects not only the rights it specifically enumerates, but also “the steps which lead to the full enjoyment of th[ose] rights,” *Robert v. City of Norfolk*, 188 Va. 413, 426-27 (1948)—which is presumably why Justice McCullough said that this constitutional right to hunt

“strengthen[s] the existing individual right, recognized by article I, section 13, to keep and bear arms,” McCullough, *supra* at 232.

78. Because SB749 bans rifles, pistols, and shotguns commonly used for hunting, it violates Article XI, Section 4 of the Virginia Constitution.

Count 4: Violation of U.S. Constitution, Fourteenth Amendment

79. Plaintiffs re-allege and incorporate by reference the preceding paragraphs as though fully set out herein.

80. The Due Process Clause of the Fourteenth Amendment prevents states from enacting vague laws.

81. “A fundamental principle in our legal system is that laws which regulate persons or entities must give fair notice of conduct that is forbidden or required.” *FCC v. Fox TV Stations, Inc.*, 567 U.S. 239, 253 (2012). A law is unconstitutionally vague if it “fails to provide a person of ordinary intelligence fair notice of what is prohibited, or is so standardless that it authorizes or encourages seriously discriminatory enforcement.” *United States v. Williams*, 553 U.S. 285, 304 (2008).

82. “The prohibition of vagueness in criminal statutes” is especially “essential.” *Johnson v. United States*, 576 U.S. 591, 595-96 (2015). “[C]riminal responsibility should not attach where one could not reasonably understand that his contemplated conduct is proscribed.” *United States v. Nat’l Dairy Prods. Corp.*, 372 U.S. 29, 32-33 (1963).

83. “[P]erhaps the most important factor” in shaping “the clarity that the Constitution demands of a law” is whether the law “threatens to inhibit the exercise of constitutionally protected rights.” *Vill. of Hoffman Ests. v. Flipside, Hoffman Ests., Inc.*, 455 U.S. 489, 498-99 (1982). Just as a law that “interferes with the right of free speech or of association” demands “a more stringent

vagueness test,” *id.* at 499, so too does a law that prohibits people from possessing the arms the Second Amendment entitles the people to keep. And when a law “reaches a substantial amount of constitutionally protected conduct,” *id.* at 494, it must speak “only with narrow specificity,” *NAACP v. Button*, 371 U.S. 415, 433 (1963).

84. SB749’s definition of “assault firearm” fails to give fair notice of what semiautomatic shotguns come within the scope of SB749’s “assault firearm” ban. That definition includes a gestalt catchall provision that invites law enforcement to apply the ban to any semiautomatic shotgun they deem to be sufficiently similar to shotguns that have a laundry list of other characteristics, including “folding, telescoping, or collapsible” stocks; “a thumbhole stock or pistol grip that protrude conspicuously beneath the action”; “the ability to accept a detachable magazine”; or “a fixed magazine capacity in excess of 15 rounds.” Ex.2 at 6:309-12. Far from clarifying matters, that grab-bag of common features serves only to introduce confusion, because it lacks any semblance of a unifying theme: Some of the singled-out characteristics are designed to make a firearm safer or more accessible generally; others to enhance a firearm’s utility for self-defense or hunting applications; still others simply make a firearm easier to store. *See supra* ¶43. And even if “some” quantum of semiautomatic shotguns might “clearly fall[] within the provision’s grasp,” *Johnson*, 576 U.S. at 602, the definition nonetheless “produces more unpredictability and arbitrariness than the Due Process Clause tolerates,” *Sessions v. Dimaya*, 584 U.S. 148, 175 (2018).

Count 5: Violation of Virginia Constitution, Article I, §11

85. Plaintiffs re-allege and incorporate by reference the preceding paragraphs as though fully set out herein.

86. Article I, §11 of Virginia’s Constitution contains a Due Process Clause “almost exact[ly]” identical to the Fourteenth Amendment. *Jackson v. W.*, 14 Va.App. 391, 405 n.11 (Ct. App. 1992). Virginia’s clause likewise compels invalidating laws as “unconstitutionally vague if persons of common intelligence must necessarily guess at [the] meaning [of the language] and differ as to its application.” *Ibanez v. Albemarle Cnty. Sch. Bd.*, 80 Va.App. 169, 213-14 (Ct. App. 2024). And just like federal law’s void-for-vagueness doctrine, the vagueness concerns under Article I, §11 are also “heightened” when “a vague statute may inhibit the exercise of constitutionally protected activities.” *Id.*

87. SB749 is unconstitutionally vague under Article I, §11 of the Virginia Constitution for the same reasons as it is unconstitutionally vague under the Fourteenth Amendment to the U.S. Constitution.

PRAYER FOR RELIEF

Plaintiffs respectfully request that this Court enter judgment in favor of Plaintiffs and against Defendant and that this Court provide the following relief:

A. A declaration that SB749’s ban on the importation, sale, manufacture, purchase, or transfer of an “assault firearm,” its associated definition of “assault firearm,” and its ban on the importation, sale, bartering, purchase, or transfer of a “large capacity ammunition feeding device” violate the Second Amendment to the U.S. Constitution;

B. A declaration that SB749’s ban on the importation, sale, manufacture, purchase, or transfer of an “assault firearm,” its associated definition of “assault firearm,” and its ban on the importation, sale, bartering, purchase, or transfer of a “large capacity ammunition feeding device” violate Article I, §13 of the Virginia Constitution;

C. A declaration that SB749's "assault firearm" ban, its associated definition of "assault firearm," and its "large capacity ammunition feeding device" ban violate Article XI, §4, of the Virginia Constitution;

D. A declaration that SB749's ban on the importation, sale, manufacture, purchase, or transfer of an "assault firearm" and its associated definition of "assault firearm" violate the Fourteenth Amendment to the U.S. Constitution;

E. A declaration that SB749's ban on the importation, sale, manufacture, purchase, or transfer of an "assault firearm" and its associated definition of "assault firearm" violate Article I, §11, of the Virginia Constitution;

F. An order preliminarily and permanently enjoining Defendant and his agents, officers, and employees, including their successors or replacements in office, from enforcing the challenged portions of SB749;

G. An order preliminary and permanently enjoining all other Commonwealth's Attorneys and their agents, officers, and employees, including their successors or replacements in office, from enforcing the challenged portions of SB749;

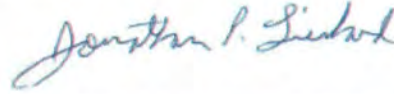
H. An award of reasonable attorneys' fees as permitted by applicable law and Supreme Court Rule 3:25;

I. An award of costs as permitted by Virginia Code §8.01-190; and

J. An award of all other relief that the Court deems just, necessary, and appropriate.

Dated: May 15, 2026

Respectfully submitted,



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Counsel for Plaintiffs

VERIFICATION PURSUANT TO VIRGINIA CODE §8.01-4.3

I declare under penalty of perjury that all factual allegations in the foregoing Verified Complaint are true and correct to the best of my knowledge and belief.

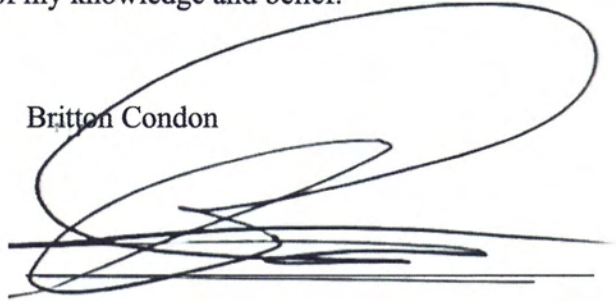
Eric Black

A handwritten signature in black ink, appearing to read "Eric Black", is written over a horizontal line.

VERIFICATION PURSUANT TO VIRGINIA CODE §8.01-4.3

I declare under penalty of perjury that all factual allegations in the foregoing Verified Complaint are true and correct to the best of my knowledge and belief.

Britton Condon

A handwritten signature in dark ink, appearing to be 'Britton Condon', written over a horizontal line. The signature is stylized with a large, sweeping loop at the top and a series of horizontal strokes at the bottom.

VERIFICATION PURSUANT TO VIRGINIA CODE §8.01-4.3

I declare under penalty of perjury that all factual allegations in the foregoing Verified Complaint are true and correct to the best of my knowledge and belief.

Clark's Gun Shop, Inc. (d/b/a Clark Brothers)

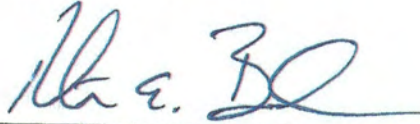
A handwritten signature in cursive script, appearing to read 'Allison Clark', written over a horizontal line.

By: Allison Clark
Its: Owner

VERIFICATION PURSUANT TO VIRGINIA CODE §8.01-4.3

I declare under penalty of perjury that all factual allegations in the foregoing Verified Complaint are true and correct to the best of my knowledge and belief.

Optimus Arms, LLC

A handwritten signature in blue ink, appearing to read "R. E. Brush", written over a horizontal line.

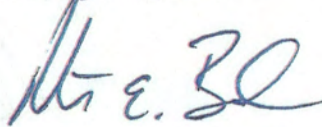
By: ROBERT E. BRUSH

Its: CEO

VERIFICATION PURSUANT TO VIRGINIA CODE §8.01-4.3

I declare under penalty of perjury that all factual allegations in the foregoing Verified Complaint are true and correct to the best of my knowledge and belief.

Hexmag USA, LLC

A handwritten signature in blue ink, appearing to read "R. E. Brush", written over a horizontal line.

By: ROBERT E. BRUSH

Its: CEO

EXHIBIT 1

DECLARATION OF BRIAN DELAY

Pursuant to 28 U.S.C. § 1746, I, Brian DeLay, declare and state as follows:

1. I am over the age of eighteen (18) years, competent to testify to the matters contained in this declaration, and testify based on my personal knowledge and information.
2. I am an Associate Professor of History and the Preston Hotchkis Chair in the History of the United States at the University of California, Berkeley.

BACKGROUND AND QUALIFICATIONS

3. I received my B.A. from the University of Colorado, Boulder (1994), and my M.A. (1998) and Ph.D. (2004) from Harvard University. My first book, *War of a Thousand Deserts: Indian Raids and the U.S.-Mexican War* (Yale University Press, 2008), won best book prizes from several scholarly organizations. Since 2010, I have been working on three interrelated projects about the historic arms trade: a monograph about the arms trade in the era of American Revolutions (under contract with W.W. Norton and scheduled to be published in 2025); a second monograph about guns, freedom, and domination in the Americas from 1800-1945 (also under contract with W.W. Norton); and a database tracking the global trade in arms and ammunition between the end of the Napoleonic Wars and start of World War I. These projects are grounded in primary-source research in archives in the United States, England, Spain, and Mexico.

4. I have delivered around three dozen presentations on firearms history at universities in the U.S. and abroad, including Harvard University, the University of Chicago, Stanford University, Oxford University, Cambridge University, the University of Melbourne, Doshisha University in Kyoto, Japan, and the Zentrum für Interdisziplinäre Forschung (ZIF), in Bielefeld, Germany. My research on the history of firearms has been supported by grants from the American Philosophical Society, the British Academy, the American Council of Learned

Societies, and the Stanford Humanities Center, among other organizations. In 2019, I was awarded a Guggenheim fellowship.

5. I have been retained by the Office of the Attorney General of Illinois to provide expert testimony in litigation challenging various aspects of Illinois Public Act 102-1116, also known as the Protect Illinois Communities Act. As of the date of this declaration, the scope of my engagement includes providing expert testimony in the following cases: *Harrel v. Raoul*, Case No. 23-cv-141-SPM (S.D. Ill.); *Langley v. Kelly*, Case No. 23-cv-192-NJR (S.D. Ill.); *Barnett v. Raoul*, 23-cv-209-RJD (S.D. Ill.); *Federal Firearms Licensees of Illinois v. Pritzker*, 23-cv-215-NJR (S.D. Ill.); and *Herrera v. Raoul*, 23-cv-532 (N.D. Ill.). I have reviewed the provisions of Public Act 102-1116 being challenged in this case. I am being compensated at a rate of \$400/hour for my work on this matter.

6. In addition to my work as an expert witness on this case, I've served as an expert witness for *Hanson v. District of Columbia*, 22-cv-02256 (D.D.C.); *Arnold v. Kate Brown et al.*, No. 22CV41008 (Harney Cty. Cir. Ct.); and *Oregon Firearms Federation et al. v. Kate Brown et al.*, 22-cv-01815 (D. Ore.); all cases challenging limits on high-capacity magazines. A true and correct copy of my curriculum vitae is attached as Exhibit A to this declaration.

PURPOSE AND SUMMARY

7. I have been asked to provide my understanding of the history and regulation of high-capacity firearms in the United States, with an emphasis on the years surrounding 1791 and 1868. For the purposes of this declaration, I use "high-capacity firearms" to mean hand-held arms with a capacity greater than ten rounds, recognizing that Illinois's statute allows up to 15 rounds for handguns. Below I make three basic points. First, high-capacity firearms were merely experimental and, consequently, vanishingly rare in the United States in 1791. Second, while reliable firearms with fixed high-capacity magazines first came on the market in the 1860s, they still accounted for less than 0.002% of guns in the U.S. in 1868. Third, firearms with

removable high-capacity magazines began coming under state and federal regulation soon after they first became commercially available throughout the United States in the 1920s and 1930s.

I. High-Capacity Firearms were Flawed, Experimental Curiosities in 1791.

8. The *Harrel* Plaintiffs in their complaint write that “firearms capable of holding multiple rounds have existed since the 15th century”¹ Technically, that’s true. Inventive gunsmiths had been trying to design reliable, effective firearms capable of shooting multiple rounds without reloading since at least the sixteenth century. Evidence for their efforts can be found in personal and public archives, in patent records, and occasionally in actual weapons still preserved in museums and private collections today. But such weapons were flawed, experimental curiosities prior to the founding of the United States. They were both dangerous (to the shooter, as well as to the target) and highly unusual. Most of these weapons never advanced beyond proof of concept. Only a small minority of large-capacity firearm inventions ever moved past the design or prototype stage, and none achieved commercial significance or military relevance prior to 1791. This centuries-long history of inventive failure has a context, one that ought to be borne in mind when evaluating claims about the historic regulation of firearms—or lack thereof.

A. The elusive quest for reliable high-capacity firearms prior to the 19th century

9. Europeans began engaging with gunpowder and its potential military applications in the thirteenth century. By then, European states had long been in competition with one another for military and economic advantage. As the design and efficacy of artillery, bombs, and handheld firearms improved, and as these improvements forced leaders to reconsider venerable military traditions, states began spending more and more on their militaries. Intensifying competition between sovereigns created powerful incentives for craftspeople and inventors to improve on existing military technology.²

¹ Complaint, *Harrel, et al., v. Raoul, et al.*, 23-cv-00141-SPM (S.D. Ill.), ¶ 67 (hereafter, “*Harrel* Complaint”).

² Geoffrey Parker, *The Military Revolution: Military Innovation and the Rise of the West, 1500-1800*, 2nd ed. (Cambridge University Press, 1996).

10. Sovereign competition fueled innovation. Three of the most important innovations in the seventeenth and eighteenth centuries were: (a) gradual improvements in gunpowder coming, a process that made powder burn more evenly and enabled producers to better modulate its power; (b) the substitution of the cumbersome matchlock ignition system for the more reliable flintlock system in the late seventeenth century; and (c) the development of the socket bayonet (also in the late seventeenth century), which, for the first time, enabled infantry to act both as musketeers and pikemen. All three breakthroughs had significant consequences for the development and use of firearms around the world. Still, most improvements to firearms technology were incremental during the Renaissance and early modern era. Meaningful breakthroughs were very rare.

11. Repeat fire was probably the most coveted but elusive of the gun-making world's aspirations. Safe and reliable increased rate of fire would have been an invaluable force multiplier for militaries before the nineteenth century. States would have paid handsomely to acquire such a comparative advantage, and that prospect incentivized centuries of experimentation. Four basic solutions had come into view as early as the sixteenth century. Each attracted generations of talented gunsmiths, and each had distinct virtues and limitations. The first solution achieved repeat fire with a revolving breech; one innovative design along these lines emerged in Germany in the early sixteenth century. The second approach employed multiple barrels. A seventeenth-century Scot built a gun with a single, fixed breech and fifty barrels arrayed around an axis, for instance. A third design incorporated an internal magazine housing enough powder and (sometimes) balls for multiple shots. Most such arms employed a rotating breechblock to cycle a single powder charge and (sometimes) a single ball into the chamber, before sealing the chamber for firing.³

³ M. L. Brown, *Firearms in Colonial America: The Impact on History and Technology, 1492-1792* (Washington: Smithsonian Institution Press, 1980), 50 (Germany), 100 (Scotland). Of early magazine repeaters, a respected authority says "as all were basically impractical and many quite hazardous to use they were produced in extremely limited quantities and hence all are considered great collector's prizes." Norm Flayderman, *Flayderman's Guide to Antique American Firearms and Their Values*, Ninth edition (Iola, WI: Gun Digest Books, 2007), 691.

12. The fourth approach, the so-called superposed load or stacked charge method, functioned like a roman candle. In the most effective version, lead balls would be drilled through, like beads. Their central canal would be filled with gunpowder or another, slower-burning compound. A regular gunpowder load would then be packed into the barrel of the gun, followed by one of the pierced rounds, then more gunpowder, then another pierced round, and so on, the loader being exceedingly careful to perfectly align the canals of the individual rounds. Upon firing, the first round (the one closest to the muzzle, would ignite the material inside the bore of the second round, which, a fraction of a second later, would communicate flame to the second powder charge (behind the second pierced ball), and so on, until all shots had left the gun.⁴

13. Master gunsmiths made exquisite varieties of repeating arms from the sixteenth through the eighteenth centuries, at high cost. Designs with rotating breeches or multiple barrels seldom exceeded a ten-round capacity, but early magazine or superposed firearms could. Regardless of type, gunmakers often decorated multi-fire weapons lavishly, and sold or gifted them to a tiny stratum of elite consumers across Europe. But most of these weapons remained gorgeous curiosities, usually more suited to admire than to shoot. Prized more than used, early repeating firearms survive at far, far higher rates than do the era's ordinary, single-shot firearms that did actual work in the world. While produced in very small quantities annually, therefore, they accumulated over the centuries of production so that today the world's museums and collectors possess many intriguing specimens.

14. Notwithstanding often brilliant work, no large-capacity firearm design functioned well enough to become militarily and commercially significant before the nineteenth century. These ideas were simply too far ahead of their times. W. W. Greener, one of the English-speaking world's preeminent authorities on firearms history, put it this way: "The advantages of the repeating principle thus appear to have been observed at an early date, and the inventive

⁴ For discussion of some particularly ingenious superposed load designs, see M. L. Brown, *Firearms in Colonial America: The Impact on History and Technology, 1492-1792* (Washington: Smithsonian Institution Press, 1980), 104-6.

genius of the gun-maker would have been equal to producing weapons of the desired type if only the skill and tools of the workman had allowed of a perfect mechanically fitting joint being obtained.”⁵ Most rotating breech mechanisms were complex and exceedingly difficult to make well before moving parts could be built with machine precision. Long-guns festooned with several barrels were too heavy and cumbersome to be practical handheld weapons. Early magazine guns demanded an even higher level of craftsmanship in order to create a perfect seal between the rotating breechblock and the stored powder, lest the combustion in the chamber ignite the magazine. The best, like those made by the Florentine Michele Lorenzoni in the late seventeenth and early eighteenth centuries, minimized these dangers through slow, precise craftsmanship. But early magazine guns were perilous even in the hands of expert gunmakers. Lorenzoni’s countryman, the famed gunmaker Bartolomo Girardoni, reportedly lost his left hand in a magazine explosion.⁶

15. As for muskets with superposed loads, they were mechanically simpler than the alternatives. But roman-candle style bursts of fire had limited utility on the battlefield and no utility off of it. Worse, like all but the best-made magazine arms, superposed load systems were notoriously perilous to the shooter on account of having so much explosive gunpowder packed into a single firearm. If the sequencing between rounds was off, the barrel could explode like a tubular grenade in the shooter’s hands. Smoke was another issue. In the gunpowder era, even regular, single-shot muskets produced clouds of acrid white smoke that obscured battlefield targets. Firing a superposed load just once made that problem five, ten, or twenty times worse (depending on the number of loads). The final major drawback to most superposed load designs was that even when everything went according to plan, the shooter had little or no control over

⁵ W. W. Greener, *The Gun and Its Development*, 9th ed. (London: Cassell and Company, LTD, 1910), 80.

⁶ On early magazine arms specifically, Greener (p. 81) writes: “The peculiar complication of the various mechanisms, and the general inutility of the weapons themselves, render a detailed description of little value to the inventor or the general reader; but the connoisseur will find several varieties in the Paris Museum.” For Girardoni’s accident, see Eldon G. Wolff, *Air Guns*, Milwaukee Public Museum Publications in History 1 (Milwaukee, WI: North American Press, 1968), 27.

the pace of firing. All he could do was point the gun, say a prayer, brace himself for an epic recoil, pull the trigger once, and hope that the eight or ten or twenty charges inside the barrel went in the right direction. Such weapons had little utility outside of formal warfare, and their dangerous drawbacks meant that they were seldom used in martial combat, either.

16. The *Harrel* Plaintiffs offer a few examples of early repeating arms. These include an unremarkable sixteenth-century superposed load gun; magazine arms supposedly issued to a special unit of the English army in 1658 (possible, but the ultimate source for that claim is an assertion made without evidence in a 1985 book, so it is impossible to verify), and what they refer to as “the now-famous ‘Puckle Gun’.”⁷ The Puckle gun is worth lingering over here, because it exemplifies both just how strange and flawed most examples of early modern repeat-fire weapons really were, and how misleading it is to imply otherwise.

17. The gun patented by English lawyer James Puckle in 1718 isn’t exactly famous. But the notoriety it does enjoy today is attributable to gun-rights authors exaggerating its importance and obscuring its context.⁸ Elaborating on what by the early eighteenth century were established rotating breech designs, Puckle devised a clever multi-fire, flintlock ignition gun. It consisted of a long barrel mounted to a tripod, and three removable, rotating breeches. Each of the three breeches had different purposes. One was designed for shooting “grenadoes,” by which Puckle apparently meant shrapnel; one fired standard round balls; and one fired shots cast in the shape of ice-cubes. Puckle intended the balls to be used on Christians, and the cubes to be used against Muslim Turks. Needless to say, this was a design that privileged mystical sectarian posturing over battlefield effectiveness (and aerodynamism). The bulky gun required at least two men to carry and position, making it more like light artillery than a handheld firearm. Sometimes misleadingly billed as the first machine-gun, Puckle’s exotic firearm was not self-loading – the user had to reposition the breech with a hand crank in-between each round. Compared to actual machine guns, it had a glacial rate of fire. Once it had discharged its seven cube-loads, for

⁷ *Harrel* Complaint ¶ 68.

⁸ See for example David B. Kopel, “The History of Firearms Magazines and Magazine Prohibitions,” *Albany Law Review* 88 (2015): 852.

example, the breech had to be removed; each chamber had to be re-loaded with powder, wadding, and shot; the breech had to be carefully re-attached to the gun; and the touch-hole of each chamber had to be re-primed as it came into position prior to each shot. Given that a soldier skilled in drill could fire five or six shots a minute from a smoothbore musket, the Puckle Gun hardly represented a major breakthrough in firearms technology. And that modest assessment assumes that the firearm reliably worked. Charles Ffoulkes, the researcher who re-discovered the Puckle Gun in 1936, had his doubts. Like all rotating breech designs made before the Industrial Revolution, the breech of the Puckle Gun could not be fully gas-proof. In fact, Ffoulkes found the design even more faulty than others with rotating breeches, because the closeness of the chambers heightened the risk of a chain-fire (one charge prematurely igniting the others). The British military seems to have shared Ffoulkes' skepticism. The inventor formed a company to raise investment around his gun, but it never got off the ground. "They're only wounded who have shares therein," quipped one wry contemporary. The interesting, flawed design sunk into deserved obscurity.⁹

18. To be fair to James Puckle, the fundamental material and technological hurdles were beyond anyone's solving in the eighteenth century. To be durable, reliable, affordable, and safe enough to achieve popularity, the experimental designs required metallurgical techniques and a level of machine precision unknown until well into the nineteenth century. Not until the advent of these and other breakthroughs (including the adoption of percussion-cap ignition in the 1830s and metallic cartridges in the 1850s) could repeating firearms become practical weapons of mass production, widespread military adoption, and commercial popularity.¹⁰

19. Neither hustling arms inventors looking to make a fortune nor military and political leaders hunting for battlefield advantage knew that, of course. Hope sprung eternal, on both

⁹ Charles Ffoulkes, *Arms And Armament*, 1945, 82–85. Quote is from W. Y. Carman, *A History of Firearms: From Earliest Times to 1914* (Mineola, N.Y.: Dover Publications, 2004), 80.

¹⁰ For a summary of the basic technological hurdles and how they were finally overcome in the nineteenth century, see Joseph Bradley, *Guns for the Tsar: American Technology and the Small Arms Industry in Nineteenth-Century Russia* (DeKalb, Ill.: Northern Illinois University Press, 1990), 12–19.

sides. That is why numerous historic designs for high-capacity firearms exist, despite the technical and material limitations that prevented any of them from achieving commercial or military relevance.

B. Repeating arms in the colonies and early United States

20. Advances in high-capacity firearm technology usually arose in Europe prior to the nineteenth century, and most varieties of these rare weapons stayed in Europe. Very occasionally, however, high-capacity firearms appear in the documentary record of early America. What are we to make of such evidence? The *Harrel* Plaintiffs conclude that “firearms capable of firing multiple rounds without reloading were well known to the founding generation.”¹¹ They briefly mention two examples to substantiate this claim: a repeater designed by Joseph Belton and a Girardoni air rifle. Put into proper context, these two guns make it clear that the founding generation could only have thought of repeating firearms as flawed curios.

21. Philadelphian Joseph Belton saw an opportunity for military contracts with the outbreak of the American Revolution. In 1775 he pitched an idea for a submersible with cannons that he claimed would sink British ships. Benjamin Franklin recommended Belton and his submersible idea to George Washington, but still the proposal went nowhere.¹² In 1777, Belton tried another approach. He informed the Continental Congress that he had “discover’d an improvement, in the use of Small Armes... which I have kept as yet a secret.” Surviving correspondence suggests that Belton was pitching a superposed load design. Intrigued, Congress placed an order for 100 of these “new improved” guns. Congress cancelled the order a few days

¹¹ *Harrel* Complaint ¶ 69.

¹² See Benjamin Franklin to Silas Deane, Philadelphia, Aug. 27, 1775, and editors’ footnote #2, available here: <https://founders.archives.gov/?q=joseph%20belton&s=1111311111&sa=&r=1&sr=>, accessed Jan. 27, 2023; Benjamin Franklin to George Washington, Philadelphia, July 22, 1776, and editors’ footnote #1, available here: <https://founders.archives.gov/?q=joseph%20belton&s=1111311111&sa=&r=3&sr=>, accessed Jan. 27, 2023; and George Washington to Benjamin Franklin, New York, July 30, 1776, available here: <https://founders.archives.gov/?q=joseph%20belton&s=1111311111&sa=&r=4&sr=>, accessed Jan. 27, 2023.

after extending it, however, and refused to ever reconsider notwithstanding Belton's increasingly desperate appeals.¹³

22. It seems that Congress changed its mind once it heard Belton's exorbitant demands for compensation. Belton requested £500 from each state, a significant sum at the time.¹⁴ But the Continental Congress issued about \$200 *million* in currency during the Revolutionary War (worth somewhere between \$5 billion and \$22 billion today).¹⁵ It clearly had the wherewithal to hire Belton if it had wanted to. Congress could and would have paid his price *if* it believed he and his guns would deliver a meaningful military advantage. That delegates evidently didn't believe this tells us much about the quality of the arms on offer. Buying 100 superposed load arms for a reasonable price might have made sense. Anything more than that was clearly not worth Congress's time.

23. Given the technical challenges afflicting repeat-fire gunpowder weapons, whether rotating breech-, multi-barrel-, magazine-, or superposed load-designs, it is little wonder that one of the only large-capacity weapons from the period that enjoyed even limited, experimental military use in a European army wasn't a true firearm, but rather an air-gun. Using highly compressed air as the propellant, rather than gunpowder, eliminated many of the problems that had long bedeviled the quest for repeating arms. It was a relatively simple enhancement to attach a fixed tubular magazine to the side or underside of the air-gun's barrel, and to feed balls into the chamber (using gravity, by tipping the barrel up), one-by-one with a lever. The shooter could then fire as many rounds as the magazine would hold before needing to reload the fixed

¹³ The relevant correspondence has been digitized and transcribed, and is available here: https://en.wikisource.org/wiki/Correspondence_between_John_Belton_and_the_Continental_Congress, accessed Jan. 27, 2023.

¹⁴ See Joseph Belton to John Hancock, Philadelphia, May 8, 1777, at https://en.wikisource.org/wiki/Correspondence_between_John_Belton_and_the_Continental_Congress, accessed Feb. 4, 2023.

¹⁵ For wartime currency, see Stephen Mihm, "Funding the Revolution: Monetary and Fiscal Policy in Eighteenth-Century America - Google Search," in *The Oxford Handbook of the American Revolution* (Oxford; New York: Oxford University Press, 2013), 334. For present-day value, see <https://www.measuringworth.com/calculators/uscompare/relativevalue.php>, accessed Jan. 27, 2023.

magazine. Depending on the size and pressure of the compressed air reservoir, the shooter might even be able to empty the magazine more than once before needing to refill the propellant. As with other categories of repeaters, air-guns had been produced since at least the sixteenth century and probably earlier.¹⁶

24. The most impressive air-gun of the period was developed in Vienna by one-handed Bartolomeo Girardoni, shortly after the American Revolution. Following his gruesome accident working with magazine firearms, he decided to he'd had enough of gunpowder weapons and transitioned to air-guns. Girardoni made a number of improvements to existing designs, most especially an elegant breechblock mechanism for chambering balls from the attached magazine. Multi-shot air-rifles of his design saw limited service in the Austrian military between the 1790s and 1810s, a special corps of hundreds of snipers being equipped with the weapon. Air-rifles had numerous advantages over gunpowder weapons. In addition to the ease with which they were configured for multi-fire, they required no gunpowder (not always easy to obtain), and the absence of gunpowder meant that their bores required little cleaning and that shots produced no smoke and little noise.¹⁷

25. Nonetheless, air-guns had major drawbacks that consigned them to the status of military oddities and niche consumer items, notwithstanding their significant advantages. Period technology made it difficult to achieve air pressures commensurate with black powder, so power was one concern.¹⁸ The weapons were time-consuming and onerous to prime. Girardoni's air-rifles had to be pumped fifteen-hundred times to fully pressurize one reservoir. Cannisters of pressurized air can explode, much like early gunpowder magazines, producing grenade-like effects. The craft and expense involved in building reliable air-guns greatly exceeded even the

¹⁶ Wolff, *Air Guns*, 5–13. Girardoni's name is commonly misspelled Girandoni. For background on his air rifle, see the learned essay by Robert D. Beeman, "New Evidence on the Lewis and Clark Air Rifle – an "Assault Rifle" of 1803," <http://www.beemans.net/lewis-assault-rifle.htm>, accessed Feb. 4, 2023.

¹⁷ For advantages, see Wolff, 25–30.

¹⁸ According to an article in the *Sportsman's Cyclopedia* from 1831, "For buck or deer shooting the best air gun is not sufficiently powerful; for rook shooting it is very well calculated." Cited in Wolff, 22.

considerable skill required to build fine firearms. Air-tight reservoirs, pumps, valve housings and valve seats had to be made with a degree of precision unknown in most manufactured goods from the era. These material and technical demands greatly increased costs. Moreover, even a craftsman of Girardoni's caliber did not yet have the materials or tools necessary to build the critical components of his design durably and with absolute precision. The air-gun's various delicate parts could easily fall out of order, as for instance when leather gaskets failed or any of the system's metal threads (necessary for attaching the removable air-reservoir to the valve assembly and the valve assembly to the gun) came out of alignment. Competent repairs were hard to secure because the requisite skills were so unusual. According to one of the few book-length studies of historic air-guns, the high cost of these arms and their various limitations made them "a novelty used by people of wealth who had sufficient funds to go in for the unusual."¹⁹

26. For all of these reasons, air-guns were exceedingly rare in eighteenth-century America. Indeed, they were so rare that owners could charge people to see them. Two months after the Second Amendment was ratified, a museum proprietor in New York named Gardiner Baker took out ads in the city's newspapers to promote his latest acquisition: "an air gun, made by a young man, a native of Rhode-Island." According to its new owner, the gun would "do execution twenty times, without renewing the charge," suggesting that it was a single-shot weapon capable of firing twenty individually loaded rounds before needing to renew the compressed air supply. Baker explained that he had purchased the gun "at a very considerable price, with a view eventually to make it the property of the American museum." In order to recoup his investment, he announced that he would "exhibit it to the examination of all persons desirous of viewing it, and of discharging a shot, for which they shall pay six-pence."²⁰

¹⁹ For disadvantages, see Wolff, 30–33. Quote from p. 31. See also John Paul Jarvis, "The Girandoni Air Rifle: Deadly Under Pressure," March 15, 2011, <https://www.guns.com/news/2011/03/15/the-girandoni-air-rifle-deadly-under-pressure>, accessed Feb. 4, 2023.

²⁰ "To the Curious," *The Weekly Museum* (New York, NY), Feb. 11, 1792. A copy of this article is attached as Exhibit B.

27. The *Harrel* Plaintiffs observe that Meriwether Lewis brought a Girardoni Air Rifle on his famous expedition across the continent with William Clark.²¹ The Corps of Discovery seems never to have fired the gun offensively or defensively. None of the more than twenty references to the air-rifle in the expedition's journals involve combat.²² Instead, like virtually every other large-capacity firearm from that period, this unusual weapon was employed as a show piece. Lewis brought the air-rifle on the expedition precisely because it was so uncommon. He hoped a gun that would fire multiple times without powder, flash, smoke, or much noise, would impress Native Peoples. It did. He happily reported that it “excite[d] great astonishment,” which is itself a testament to the weapon’s novelty.²³

28. But Indigenous people weren’t the only ones fascinated with this exotic air-gun. At the very outset of the expedition near Pittsburgh, “some gentlemen” asked for a demonstration. Lewis obliged, firing the air-gun seven times. But when one of the men took hold of the weapon, he accidentally squeezed off an eighth shot that hit a woman forty yards away, in the head. To his great relief, Lewis found the woman’s “wound by no means mortal, or even dangerous.”²⁴ That the gun’s eighth round inflicted only a minor wound at forty yards suggests it lost pressure rapidly and might not have actually been able to fire more than ten effective rounds (my criteria for a “large-capacity firearm”).

29. Air-guns remained rare curiosities elsewhere in the U.S. in the early nineteenth century. Just a few months before Lewis and Clark set out, the museum in Connecticut’s State House advertised an air-gun as one of its three prime attractions (the others being a wampum

²¹ *Harrel* Complaint ¶ 69.

²² For a discussion of the air gun and the expedition, see Jim Garry, *Weapons of the Lewis and Clark Expedition* (Norman, Okla: The Arthur H. Clark Company, 2012), 91–103.

²³ April 18, 1806 entry by Meriwether Lewis, *Journals of the Lewis & Clark Expedition*, <https://lewisandclarkjournals.unl.edu/item/lc.jrn.1806-04-18#lc.jrn.1806-04-18.01>, accessed Feb. 4, 2023.

²⁴ August 30, 1803 entry by Meriwether Lewis, *Journals of the Lewis & Clark Expedition*, <https://lewisandclarkjournals.unl.edu/item/lc.mult.1803-08-30kloefkorn>, accessed Feb. 4, 2023.

cloak and a sixteen-foot-long snake skin from South America). In no sense were these weapons in common use at the time.²⁵

30. In sum, notwithstanding the great desire of states for military advantage, the great incentives that they held out for inventors who could deliver it, and the centuries of skillful effort that went into chasing those incentives, large-capacity firearms remained militarily and commercially irrelevant throughout the eighteenth and early nineteenth centuries. On those very rare occasions when such weapons were deployed by European militaries, they were issued to dozens or hundreds of men in wars involving tens or hundreds of thousands of combatants. Commercially, the best (and most expensive) examples of high-capacity firearms circulated among a paper-thin slice of Europe's political and economic elite. For almost everyone else at the time, these guns were unknown and irrelevant.

31. I've spent the past twelve years studying the international arms trade in the Age of Revolutions (1763-1825). I have never come across any evidence in primary sources that large-capacity firearms were anything other than exotic curios in this era. Few alive at the time had ever laid eyes on one. Single-shot muzzle-loading smoothbore muskets, rifles, and pistols remained the only handheld firearms that the vast majority of people ever owned, used, or encountered in the late-eighteenth and early-nineteenth centuries. That fact ought to be borne in mind when assessing the absence of laws regulating ammunition capacity at the time the Second Amendment was adopted.

C. Firearms regulation in America prior to 1791

32. Authorities in British North America and in the early United States passed hundreds of laws that directly or indirectly regulated firearms prior to 1791. Nearly all of them were motivated by concerns for public safety. Sometimes they anticipated laws in our own times. For example, colonies and states passed laws regulating the brandishing or carrying of particular weapons; proscribing particular activities with them (dueling, for instance); forbidding firing in

²⁵ "James Steward's advertisement 'Museum,' in *The Connecticut Courant*, April 27, 1803. A copy of this advertisement is attached as Exhibit C.

certain times and places; magnifying sentences for crimes committed with them; and banning them from sensitive places.²⁶

33. These types of laws, regulating the use of deadly weapons within white communities, reflect public safety concerns familiar to twenty-first century Americans. But regulating gun violence between subjects (or, after independence, citizens) wasn't as significant a policy concern in early America as it is today. Prior to the widespread availability of breechloading weapons and metallic cartridges in the mid-nineteenth century, firearms were awkward tools either for perpetrating or resisting crimes of passion. They were notoriously inaccurate at range and had to be muzzle-loaded with gunpowder and ball before every shot, either by pouring ammunition direct into the barrel or packing in a pre-made paper cartridge loaded with powder and ball. That took time and focus. Moreover, such guns could not be kept safely armed and at the ready for any extended period because black powder corroded iron barrels so quickly. Partly for these reasons, firearms usually played a relatively small role in murders between white people in North America before the era of the Civil War. Randolph Roth, the nation's foremost scholar of the history of homicide in North America, has found for example that only 10-15% of family and intimate partner homicides involved a firearm prior to the mid-nineteenth century. More generally, rates of gun violence rose and fell in step with political instability and shifts in faith in government, justice, and social hierarchy. At its worst, firearms were never used in more than two-fifths of homicides between unrelated white people before the Civil War era. By way of comparison, in 2020 nearly four-fifths of all homicides in the United States involved a firearm.²⁷

²⁶ For a discussion of these laws by category, see Robert J. Spitzer, "Gun Law History in the United States and Second Amendment Rights," *Law and Contemporary Problems* 80 (2017): 55–83.

²⁷ For homicide and arms technology, see Randolph Roth, "Why Guns Are and Are Not the Problem: The Relationship between Guns and Homicide in American History," in *A Right to Bear Arms? The Contested Role of History in Contemporary Debates on the Second Amendment*, ed. Jennifer Tucker, Barton C. Hacker, and Margaret Vining (Washington D.C.: Smithsonian Scholarly Press, 2019), 113–34. For 2020 homicides, see John Gramlich, "What the Data Says about Gun Deaths in the U.S.," *Pew Research Center* (blog), February 3, 2022, <https://www.pewresearch.org/fact-tank/2022/02/03/what-the-data-says-about-gun-deaths-in-the-u-s/>, accessed Feb. 4, 2023.

34. The large majority of pre-1791 laws pertaining to firearms reflect public safety concerns that are (thankfully) alien to our own times. In the first instance, firearms were necessary for the two systematic forms of violent predation that preoccupied generations of European colonists and American citizens: dispossessing Native People of their land and terrorizing and enslaving people of African descent (nearly a fifth of the population in the thirteen colonies in 1775). Neither project could have been sustained without a weapons gap. Moreover, European rivals (the Dutch, French, Spanish, and, after Independence, British) controlled parts of eastern North America and periodically threatened the ambitions and security of British colonists and U.S. citizens. During wartime, these rivals also threatened to arm the Indigenous and African-descent victims of the British and early U.S. project. Anglo authorities before and after Independence used law to try and answer these interconnected challenges to the safety of the white public.

35. The largest category of relevant legislation, hundreds of militia laws, sought to encourage and regulate firearm possession, upkeep, and practice by white men throughout the colonies and states in the early national era. The militia was the primary vehicle for public safety in the colonial and early national era, tasked with collective security needs of a white slaveholding, settler-colonial public periodically menaced by European rivals.

36. Colonial-era militias were state-led, definitionally. Of course, white colonists sometimes came together in armed bodies to pursue collective goals in defiance of government. But those weren't legal militias. The men involved in Bacon's Rebellion (Virginia, 1676) and the Regulator Insurrection (North Carolina, 1766-71), like the participants of Shay's Rebellion (Massachusetts, 1786-87) and the Whiskey Rebellion (primarily Pennsylvania, 1791-94) following Independence, were members of criminal insurrections suppressed by state power. *Militias* were formal, compulsory, selective (almost always confined to able-bodied white men and often excluding or excusing categories of able-bodied white men), and, by definition, deployed for state-sanctioned purposes.²⁸

²⁸ K. Sweeney, "Firearms, Militias, and the Second Amendment," in *The Second Amendment on Trial: Critical Essays on District of Columbia v. Heller*, by Saul Cornell and

37. Authorities in colonial America passed more than six hundred militia laws before the Revolution, laws mandating how these bodies were to be constituted, mobilized, equipped, led, disciplined, and armed. Research in militia returns, census data, and probate records makes it clear that government exerted a powerful influence on the geography of gun ownership in the British colonies, and that it did so primarily through the mechanism of militia laws. Gun ownership was highest in those colonies where governments energetically encouraged and supported militia service. These were places where the violence of slavery and settler colonialism, and/or the threat of nearby imperial rivals inevitably resulted in security concerns. In such places, colonial authorities mandated gun ownership and, in times of heightened anxiety, took steps to equip militiamen who lacked their own arms.²⁹

38. Colonial and early national legislatures also passed numerous laws aimed at depriving Indigenous and enslaved people of access to arms and ammunition.³⁰ Opponents of firearm regulation sometimes point to such laws to argue that early American firearm restrictions were inherently racist.³¹ That framing is misleading, for two reasons. First, it obscures the distinction between law and actual practice. Notwithstanding various prohibitions in colonial and early-national law, Indigenous polities in eastern North America were undoubtedly the best-armed societies on the continent per-capita during the eighteenth and early nineteenth centuries. Most Native men east of the Mississippi had extensive military training with firearms; engaged in commercial hunting as their primary economic activity; owned several firearms over the

Nathan Kozuskanich (Amherst & Boston: University of Massachusetts Press, 2013), 310–82. See also Saul Cornell, *A Well-Regulated Militia: The Founding Fathers and the Origins of Gun Control in America* (Oxford ; New York: Oxford University Press, 2006), 30–37.

²⁹ In addition to Sweeney, see James Lindgren and Justin L. Heather, “Counting Guns in Early America,” *William and Mary Law Review* 43 (2001): 1777; Michael Lenz, “*Arms Are Necessary*”: *Gun Culture in Eighteenth-Century American Politics and Society* (Köln: Böhlau, 2010).

³⁰ For laws targeting Native and enslaved people, see examples in John C. (John Codman) Hurd, *The Law of Freedom and Bondage in the United States* (Boston: Little, Brown & Co., 1858), 1:234, 243–44, 257, 288, 302–6; Sally E. Hadden, *Slave Patrols: Law and Violence in Virginia and the Carolinas* (Cambridge, Mass.; London: Harvard University Press, 2003), 37.

³¹ See for example Clayton E. Cramer, “The Racist Roots of Gun Control,” *Kansas Journal of Law & Public Policy* 4, no. 2 (1995 1994): 17–26.

course of their lifetimes; and consumed significant amounts of gunpowder every year.

Notwithstanding periodic war-time embargos, European traders and authorities in North America made these goods available to Native consumers both as a matter of commerce and of politics.³²

39. Enslaved people didn't have remotely the same access to firearms and ammunition, of course. But guns are tools as well as weapons. Enslavers often wanted their human "property" to do work with guns. Consequently, colonial and early national laws contain many exceptions allowing for enslaved people to keep and bear arms if accompanied by a white person, for example, or if they had been issued "a ticket or license in writing from his master, mistress or overseer;" or if they were carrying their owner's firearms from place to place; or if they were using guns to protect crops from birds.³³ Vulnerable South Carolina, a colony with an enslaved majority that was perilously close to Spanish Florida to the south and to the mighty Creek and Cherokee nations to the West, armed enslaved men for military service throughout most of the colonial era.³⁴ There is also ample archaeological evidence for the chasm between law and reality. Excavations at slave quarters at Washington's Mount Vernon and other sites throughout the South often encounter the remains of waterfowl and small game alongside lead shot and flints, indicating that enslaved people routinely supplemented their meager rations by hunting with firearms. First, then, when Cramer observes [9] that "colonies and states utterly prohibited possession or carrying of arms by members of suspect groups," we need to distinguish between legislation and what actually happened.³⁵

³² See David J. Silverman, *Thundersticks: Firearms and the Violent Transformation of Native America* (Cambridge, Massachusetts: Belknap Press, 2016), For the ineffectiveness of most laws against trading arms with Native people, see 15–16.

³³ Quotes are drawn from Mark Frassetto, "Firearms and Weapons Legislation up to the Early 20th Century," SSRN Scholarly Paper (Rochester, NY: Social Science Research Network, January 15, 2013), 84.

³⁴ For South Carolina, see John W. Shy, "A New Look at Colonial Militia," *The William and Mary Quarterly* 20, no. 2 (1963): 181; Maria Alessandra Bollettino, "Slavery, War, and Britain's Atlantic Empire: Black Soldiers, Sailors, and Rebels in the Seven Years' War" (Ph.D. Dissertation, Austin, TX, University of Texas, Austin, 2009), 41–50.

³⁵ For gun flints and lead shot in the "House for Families" slave quarters at Mount Vernon, see Laura A. Shick, "An Analysis of Archaeobotanical Evidence from the House for Families Slave Quarter, Mount Vernon Plantation, Virginia" (M.A., United States -- District of Columbia, American University, 2005), 38. For animal remains and hunting, see Mary V.

40. Second and more fundamentally, law is an expression of social values and priorities. Pre-1791 laws targeted Native and Black people not because early American gun regulation was (or is) racist. Laws targeted Native and Black people because early American society was racist. A society built on despoiling and exploiting nonwhite people will inevitably define public safety in racist terms, and construct a legal regime targeting racial others. But whites could also be coded as social threats. When moved to do so by concerns for public safety, colonial and early national authorities were absolutely willing to deprive white people of firearms, too.

41. This is what happened in the early stages of the American Revolution. Patriot committees began disarming white political opponents as early as the fall of 1775. Events in the colony of New York illustrate the pattern. Patriots in Brookhaven, New York, resolved in September 1775 to disarm anyone who dared “deny the authority of the Continental or of this Congress, or the Committee of Safety, or the Committees of the respective Counties, Cities, Towns, Manors, Precincts, or Districts in this Colony.” At this point in the rebellion most residents of New York were likely either loyalists or vainly hoping to remain neutral in the spiraling conflict with Britain, so such disarmament orders theoretically applied to a vast population. In January, 1776, the Continental Congress ordered several hundred-armed minutemen into Queen’s County in upstate New York to disarm loyalists. George Washington ordered General Charles Lee to disarm everyone in Long Island “whose conduct, and declarations have render’d them justly suspected of Designs unfriendly to the Views of Congress.” General Philip Schuyler disarmed “malignants” in the Hudson Valley, mostly Scotch Highlanders loyal to the king. In March of 1776, Congress concluded that nearly the entire

Thompson, *The Only Unavoidable Subject of Regret*: George Washington, Slavery, and the Enslaved Community at Mount Vernon, n.d., 229. For digs more generally, and for the observation that “it is a gross exaggeration to say, as Michael Bellesiles has done, that slaves ‘did not have a single gun,’” see Philip D. Morgan and Andrew Jackson O’Shaughnessy, “Arming Slaves in the American Revolution,” in *Arming Slaves: From Classical Times to the Modern Age*, by Christopher Leslie Brown and Philip D. Morgan (New Haven: Yale University Press, 2006), 183–85.

population of Staten Island consisted of “avowed Foes” and ordered a general disarmament there.³⁶

42. Disarmament was not confined to New York. Frustrated at the results of more targeted efforts, the Continental Congress called for a general disarmament of loyalists on March 14, 1776. It recommended to all the individual colonies that they immediately “cause all persons to be disarmed within their respective colonies, who are notoriously disaffected to the cause of America, or who have not associated, and shall refuse to associate, to defend, by arms, these United Colonies.”³⁷ In addition to New York, Patriot leaders ordered loyalists disarmed in Connecticut³⁸, North Carolina³⁹, New Jersey⁴⁰, South Carolina⁴¹, Pennsylvania⁴², Massachusetts⁴³, Maryland⁴⁴, and Virginia.⁴⁵

43. There were two obvious motivations for the Founding Fathers and likeminded Americans to orchestrate a nationwide disarmament campaign against white political opponents. First, loyalists could of course use their weapons to resist the insurgency and fight for the king.

³⁶ New York examples drawn from Thomas Verenna, “Disarming the Disaffected,” *Journal of the American Revolution*, Aug. 26, 2014.

³⁷ See Congressional resolutions of Tuesday, Jan. 2, 1776, in Worthington Chauncey Ford, ed., *Journals of the Continental Congress, 1774-1789, Edited from the Original Records in the Library of Congress* (Washington, D.C.: Government Printing Office, 1904), 4:205.

³⁸ “An Act for restraining and punishing Persons who are inimical to the Liberties of this and the rest of the United Colonies,” Connecticut Assembly, Dec. 14, 1775, AA: 4:270-72.

³⁹ “Extract of a Letter from the Provincial Council of North Carolina, March 5, 1776,” in M. St. Claire Clarke and Peter Force, eds., *American Archives: Consisting of a Collection of Authentick Records, State Papers, Debates, and Letters and Other Notices of Publick Affairs, the Whole Forming a Documentary History of the Origin and Progress of the North American Colonies; of the Causes and Accomplishment of the American Revolution; and of the Constitution of Government for the United States, to the Final Ratification Thereof. In Six Series ...*, 4 (Washington D.C., 1837), 5:59. [Hereafter AA]. See also AA 5:67.

⁴⁰ “July 1, All persons who refuse to bear arms to be disarmed,” AA 6:1634.

⁴¹ South Carolina Congress, March 13, 1776, AA 5:592. South Carolina went further, ordering that if anyone previously disarmed shall arm himself again, that person would be incarcerated.

⁴² See resolves of the Pennsylvania Assembly for April 6, 1776, AA 5:714.

⁴³ See notes from the Massachusetts Council, May 1, 1776, AA 5:1301.

⁴⁴ See notes from the Baltimore County Committee, March 8, 1776, AA 5:1509.

⁴⁵ Extracts from the Votes of the Assembly [VA], April 6, 1776, AA 6:881.

Second, patriot forces were perilously under-armed and needed whatever guns they could find. This is the reason that George Washington argued for a broad confiscation program, targeting those who “claimed the Right of remaining Neuter” as well as those actively fighting for the crown. Indeed, patriot forces were so desperate for guns early in the war that they sometimes disarmed whites regardless of their political affiliation. In early 1776, Georgia (a tenth colony to add to the list above) dispatched men to search the homes of all “overseers and negroes” throughout the colony, and even those across the river in southern South Carolina, in order to seize all guns and ammunition they found, leaving behind only “one gun and thirteen cartridges for each overseer.”⁴⁶ From Massachusetts in the north to Georgia in the south, guns were taken away from white Americans in the name of public safety—public safety as the founding generation defined it.

44. In sum, early America had a diverse and extensive tradition of regulating firearms in the name of public safety. Why, then, do we find no period laws restricting the size of firearm magazines? The *Harrel* Plaintiffs observe that “there is no historical tradition of prohibiting the manufacture, importation, or sale of magazines capable of holding more than ten rounds.”⁴⁷ Here the *Harrel* Plaintiffs seem to presume a curious and unconvincing theory of historic lawmaking, one where legislators regulated technologies before they had any impact on society. Like their counterparts today, lawmakers from early America preoccupied themselves with actual social phenomena—not the possible implications of experimental technologies. They didn’t spend their time scouring European publications for news about the cutting edge of firearms technology, or hold lengthy debates about the social implications of weapons that few of them had ever seen, and that were not known to have ever been militarily or commercially consequential anywhere in the world.

45. Even if they had been aware that a Philadelphia gunmaker had a secret method of firing twenty superimposed loads with a single pull of a trigger, or that a museum proprietor in

⁴⁶ Allen Daniel Candler, ed., *The Revolutionary Records of the State of Georgia* (Atlanta, Ga.: The Franklin-Turner Company, 1908), 92.

⁴⁷ *Harrel* Complaint ¶ 66.

New York was charging people to see a repeater that fired compressed air, lawmakers in the colonial and early national eras would have had no incentive to craft legislative solutions to these technologies because these technologies had created no social problems. They remained flawed curiosities. The simplest and most accurate explanation for the absence of regulation, therefore, is that high-capacity firearms were much too rare to attract regulatory attention in 1791.

46. An appropriate modern-day analogy might be personal jetpacks. Much as high-capacity firearms did during the eighteenth-century, personal jetpacks have held appeal both for militaries and private consumers for more than a hundred years. That appeal has generated competition in research and development. But jetpacks remain an expensive and experimental curiosity to this day, because of stubborn technological, safety, and practical challenges, including cost. A future historian (or jurist) discovering evidence that a patent was taken out on a jetpack design as early as 1919 (it was); that militaries remained intrigued by the technology throughout the century (indeed, they still are); and that the jetpack commanded enduring popular interest, could conclude that the absence of public regulation reflected an ideological disposition against regulating jetpacks. But the simpler and most accurate explanation would be that jetpacks remained too rare to attract regulatory attention in 2023.⁴⁸

II. High-Capacity Firearms Became Reliable Consumer Items Prior to the Ratification of the Fourteenth Amendment, but Still Accounted for Less than 0.002% of All Guns in the United States in 1868.

47. Firearms technology would undergo dramatic evolution after 1791. Advances in metallurgy, machine tooling, and mass-production associated with the Industrial Revolution enabled gifted firearms innovators and engineers to finally overcome many of the challenges that had frustrated the quest for reliable repeat fire in earlier centuries. New innovations built on one another, such that the period from the 1820s through the 1860s became one of the most productive and dynamic in the history of firearms technology. Nonetheless, even this era of

⁴⁸ Anthony Quinn, “The Fall and Rise of Jetpacks,” Aug. 16, 2022, Royal Aeronautical Society Website, <https://www.aerosociety.com/news/the-fall-and-rise-of-jetpacks/#:~:text=The%20concept%20of%20a%20jetpack,never%20built%20or%20even%20prototyped,> accessed Feb. 4, 2023.

breakneck innovation had its limits. As I explain below, reliable hand-held arms with capacities greater than ten rounds remained exceedingly rare in the United States when the Fourteenth Amendment was ratified in 1868.

A. False starts and repeat-fire pistols

48. The evolution of firearms technology had its false starts after the ratification of the Second Amendment. In 1792, for example, while the new government was reeling from a series of catastrophic military defeats at the hands of Indigenous warriors in the Ohio Country, a Pennsylvanian named Joseph Chambers tried to interest Secretary of State Thomas Jefferson in a superposed load repeater of his design.⁴⁹ “Every nation desiring to possess the means of destroying the greatest number possible of their enemies,” Jefferson responded enthusiastically, “your discovery, if found effectual in experiment, will not want patronage anywhere.”⁵⁰ Put differently, if Chambers could deliver, the inventor would become a very wealthy and influential man. But, like so many who came before (and after) him, Chambers was unable to convince Jefferson or others in the new U.S. government that his firearm was “effectual in experiment.” Chambers had more success during the War of 1812, when the new Department of the Navy purchased a few hundred weapons of his design (different designs all employing superposed loads). Though it isn’t clear any of the guns were ever put to use, the designs were sufficiently intriguing that multiple foreign governments made inquiries. These inquiries concluded that the dangers and disadvantages of superposed loads still outweighed their advantages.⁵¹

⁴⁹ To Thomas Jefferson from Joseph G. Chambers. 13 August 1792. *Founders Online*. National Archives. <https://founders.archives.gov/documents/Jefferson/01-24-02-0274>. [Original source: *The Papers of Thomas Jefferson*, vol. 24, 1 June–31 December 1792, ed. John Catanzariti. Princeton: Princeton University Press, 1990, pp. 290–293.]

⁵⁰ From Thomas Jefferson to Joseph G. Chambers. 5 November 1792. *Founders Online*. National Archives. <https://founders.archives.gov/documents/Jefferson/01-24-02-0539>. [Original source: *The Papers of Thomas Jefferson*, vol. 24, 1 June–31 December 1792, ed. John Catanzariti. Princeton: Princeton University Press, 1990, p. 580.]

⁵¹ For Chambers’ proposal in context, see Andrew Fagal, “The Promise of American Repeating Weapons, 1791–1821,” published online at *Age of Revolutions*, Oct. 20, 2016, <https://ageofrevolutions.com/2016/10/20/the-promise-of-american-repeating-weapons-1791-1821/>, accessed Feb. 4, 2023.

49. In 1821, another American gunmaker, Isaiah Jennings of New York, obtained a patent for a gun with a sliding lock that enabled the shooter to fire superposed loads one at a time—a significant improvement over typical designs. The *Harrel* Plaintiffs note that the *New York Evening Post* heralded Jennings’ invention, though the *Post* seems to have been speculating about the conceptual possibilities of the design when it claimed it could be extended to fifteen or twenty shots.⁵² Jennings actually had two basic models: one that fired four shots, and another, rarer design that fired ten. A distinct, all-metal variant, made in even smaller quantities than the others, held twelve rounds. Jennings contracted with the state of New York in 1828 to deliver 520 of his guns. While ingenious, these select-fire superposed load flintlocks were expensive, mechanically complex, and still prone to the same catastrophic dangers that afflicted all superposed load designs.⁵³ The Jennings repeaters were technological dead-ends with no military or commercial impact.

50. But more lasting changes in firearms technology were underway. One of the most important was the development the percussion-cap ignition system. Around the turn of the century, European chemists developed a new class of highly explosive compounds, dubbed fulminates. Though the potential military applications of these compounds were tantalizing, early experiments demonstrated that they were much too powerful to be used in firearms or artillery as an alternative propellant to gunpowder. In 1805, Englishman Alexander Forsyth had the insight that while fulminates could not yet be used for propulsion, in very small quantities they could be used for ignition. Others soon improved on his idea. By the 1810s, multiple inventors were developing “percussion caps”—small, sealed caps (usually made of copper) filled with fulminate. It was a simple matter to redesign gun locks so that instead of a vice holding a flint, hammers looked like actual hammers. Rather than a pan filled with priming powder, the newly designed hammer would fall upon an iron nipple topped with a percussion cap. The percussion would ignite the fulminate, which would in turn ignite the main gunpowder charge

⁵² *Harrel* Complaint ¶ 70.

⁵³ *Flayderman’s Guide* (9e), characterizes the Jennings Repeating Flintlock as “one of the great military rarities and oddities” (p. 608).

inside the barrel. Percussion caps were inexpensive to mass produce, and far more reliable than flints as a source of ignition. Over the next few decades, militaries around the world would convert their stockpiles of firearms from flintlocks to percussion locks.

51. The advent of percussion cap ignition opened the way for reliable repeating pistols. Relieved of cumbersome hammer-vices, flints, and priming pans filled with loose powder, arms designers saw a path to using the old ideas of multiple, rotating barrels or rotating breeches to make practical weapons for the first time. Improvements in manufacturing and machine tooling made it possible both to build arms from nearly identical component parts, and to manufacture them at greater speed and less cost than ever before. By the 1830s, two types of repeating pistols were entering the market. The first type, skillfully refined and aggressively patented by the inventor Samuel Colt, featured a single barrel with a multi-chambered, rotating breech. Percussion caps were affixed to the rear of each chamber in the breech. The chamber rotated mechanically so that the cap affixed to successive chambers would assume position to receive the hammer's blow and ignite the powder inside each chamber. The second type, pioneered by Ethan Allen, featured three or more barrels that rotated around an axis (either manually or mechanically), the charge for each barrel ignited by a separate percussion cap. Also referred to as "revolvers" early on, these arms eventually came to be known as "pepperboxes." Allen had less success than Colt defending the patent for his basic design, so rival producers of multi-barrel pistols emerged quickly.

52. Because multiple barrels added significant weight, gunmakers usually designed pepperboxes with short, smooth-bore, small-caliber barrels. Pepperboxes were therefore much less powerful and less accurate at range than the rifled, long-barreled Colt revolvers. The Colt's power and range made it an appealing, even revolutionary weapon for cavalry. Mounted units in the U.S. military that had no use for pepperboxes were clamoring for Colt revolvers by midcentury. But pepperboxes were generally reliable, perfectly serviceable at close range, and they cost about a quarter as much as a Colt revolver (\$10-\$12 vs. \$40-50 by the late 1830s). So, by the mid-nineteenth century, pepperboxes had become more commercially successful than Colt's guns. Unlike repeat-fire curiosities in the eighteenth century, pepperboxes and revolvers

had actual social consequences. And these social consequences generated legislation. Responding to rising public safety concerns over the increase in gun violence and the proliferation of concealable weapons (repeating pistols as well as single-shot, percussion-cap pistols, bowie knives, and other weapons), lawmakers across the country sought to regulate conceal-carry. The nation's preeminent historian of gun law in early America calls this "the first wave of modern-style American gun-control laws." More than thirty such laws were enacted around the country between the ratifications of the Second and Fourteenth Amendments.⁵⁴

53. While recognizing the new firepower that repeat pistols made available to U.S. consumers, it is important to be mindful of two important limitations of pepperboxes and revolvers in this era. The first was capacity. Whether the firearm had rotating chambers or rotating barrels, there were practical design limits to how many shots it could fire from a single loading. Guns with too many barrels or chambers became too heavy, clunky, and hard to manage. The vast majority of revolvers and pepperboxes produced in the nineteenth century held seven or fewer rounds. *Flayderman's Guide to Antique American Firearms and Their Values*, now in its 9th edition, is considered the gold standard reference for historic American firearms. That authoritative guide lists only three nineteenth-century revolvers with greater than ten-round capacity. All of them were made in quantities best characterized as "experimental"—probably fewer than three hundred, combined.⁵⁵

⁵⁴ For pepperboxes and revolvers, see Louis A. Garavaglia and Charles G. Worman, *Firearms of the American West, 1803-1865* (Niwot, Colo.: University Press of Colorado, 1998), 95–104, 139–52, 203–20. For law, see Saul Cornell, "Limits on Armed Travel under Anglo-American Law: Change and Continuity over the Constitutional Longue Durée, 1688-1868," in *A Right to Bear Arms? The Contested Role of History in Contemporary Debate on the Second Amendment*, ed. Jennifer Tucker, Barton C. Hacker, and Margaret Vining (Washington: Smithsonian Institution, 2019), 79. Spitzer, "Gun Law History," Table 1, 59-60; 63-64. For the relevant laws, see Frassetto, "Firearms and Weapons Legislation," 20–24.

⁵⁵ (1) The Aaron C. Vaughn Double Barrel Revolver, made in the early 1860s and characterized as "one of the most rare and unusual of American percussion revolvers," held fourteen rounds. Total production: twenty or fewer. (2) The John Walch Navy Model 12 Shot Revolver, made in 1859-1860, chambered twelve rounds (six chambers, each with a double load). Total production: around 200. (3) The Charles E. Snider two-cylinder revolver, made in the 1860s, held fourteen rounds (in two, seven-shot cylinders). "Quantity unknown; very limited. Extremely rare." See Flayderman, *Flayderman's Guide to Antique American Firearms and Their Values*, 374–75, 514.

54. The second important limitation from mid-nineteenth-century pistols and pepperboxes is that they took a very long time to load. To load a cap-and-ball revolver, the shooter had to fill each chamber with the appropriate measure of gunpowder, insert a ball, compact the ball into the powder charge with a ramming rod, cap the chamber with grease to avoid chain-fire (optional but recommended), and then individually attach percussion caps to each nipple at the back of the chamber.⁵⁶ Pepperboxes had comparably laborious loading procedures. Paper cartridges containing powder and ball could be used to slightly expedite the process, but reloading could still take a minute to a minute and a half.

55. In terms of the damage that a single person can inflict with a firearm (or two), limited shot capacity and lengthy reload times made cap-and-ball revolvers and pepperboxes fundamentally different from today's semi-automatic pistols with detachable, large-capacity magazines. For comparison's sake, consider the handguns used by the killer in the Virginia Tech massacre on April 6, 2007. Using a Glock 19 and a Walther P22 and equipped with multiple magazines (of 15- and 10-round capacities, respectively) Seung-Hui Cho fired 174 shots in 9 minutes, killing 33 people and wounding 17 others before taking his own life.⁵⁷ Mass-murderers in the mid-nineteenth century could hardly have conceived of that kind of firepower.

B. The slow spread of the first successful high-capacity firearm

56. The technological and manufacturing advances that made repeat-fire pistols practical weapons for the first time also enabled new breakthroughs in long arms. Innovations in breech-loading and metallic cartridges proved particularly important. Loading a firearm muzzle-first had three disadvantages. It was hard to do while lying prone, and rising up to reload made one an easier target during combat. It meant that rifles were slow and difficult to load, because lead balls had to be nearly as large as the diameter of the barrel bore if they were to engage the internal grooves (rifling) that gave the round its spin. And it meant that repeat-fire was difficult to achieve, since the only way to feed more rounds into the barrel was through the muzzle. Guns

⁵⁶ For a demonstration, see <https://www.youtube.com/watch?v=B84wI2MKZ2s>

⁵⁷ Violence Policy Center, "Background on Pistols Used in Virginia Tech Shooting," April, 2007. <https://vpc.org/studies/vatechgunsbackgrounder.pdf> Accessed Feb. 1, 2023.

loaded at the breech solved all of these problems. But they were very difficult to build well prior to the Industrial Revolution, mainly because it was so hard to make the breech accessible but also sufficiently sealable to contain explosive gases. Multiple, practical solutions to this problem emerged in the first half of the nineteenth century. In the U.S. alone, inventors patented 135 breech-loading firearm designs between 1811-1860.⁵⁸

57. Metallic cartridges represented another breakthrough. Soldiers, especially, had used paper cartridges of powder and ball for generations. But such cartridges were easy to break, liable to get wet and ruined, and far too fragile to use in any kind of ammunition-feeding device. Once percussion caps came into common use, however, it took little imagination to envision a single, metal object that contained primer, powder, and ball all in one. By the 1850s, inventors began moving from concept to practical application.

58. Flawed but clever designs began to appear that combined attached or internal magazines, metallic cartridges, and mechanisms for the loading of cartridges and ejection of spent cases. This line of innovation culminated in 1860 with the world's first reliable firearm with a greater than ten-shot capacity. It was developed by Oliver Winchester's New Haven Arms Company.⁵⁹ The "Henry," named after Winchester's brilliant gunmaker, Benjamin Tyler Henry, was an ingenious breech-loading, lever-action rifle that could fire sixteen rounds without reloading (one in the chamber and fifteen from an attached, tubular magazine). Refinements to the Henry resulted in an even better gun: the Winchester Model 1866. Throughout the 1860s, none of the viable alternatives fired more than ten rounds. Practically speaking, then, Henrys and Winchesters were the only large-capacity firearms in circulation in the years surrounding the ratification of the Fourteenth Amendment.

⁵⁸ Alexander Rose, *American Rifle: A Biography* (New York, N.Y: Delacorte Press, 2008), 134.

⁵⁹ The Spencer Repeating Rifle, also introduced in 1860 and also destined for military and commercial success, was a seven-shot, lever-action rifle.

59. Company records reveal there were 74,000 Henrys and Winchester 1866s produced between 1861 and 1871.⁶⁰ Notwithstanding the Winchester's ubiquity in Hollywood westerns, the vast majority of these weapons were made to order for foreign armies and exported abroad. The Ottoman Empire alone purchased 50,000 Model 1866s, and another 14,706 went to military purchasers in Europe, Latin America, and Japan during these years.⁶¹ Based on the Winchester's production figures, that would have left only 9,294 high-capacity firearms for domestic consumption in the United States before 1872. Of those, 8,500 were Henrys purchased by or issued to Union soldiers during the Civil War.⁶² These figures suggest (a) that high-capacity firearms went almost exclusively to military buyers through the early 1870s, and (b) that very few were in the hands of private persons that might have used them in ways that attracted regulatory attention.

60. The figures also tell us that even a few years after the ratification of the Fourteenth Amendment, high-capacity firearms constituted a tiny percentage of firearms in the United States. How tiny? Some numbers offer perspective. In 1859, on the eve of the Civil War, the U.S. Ordnance Department counted 610,262 shoulder arms in federal arsenals. Combined, the arsenals of individual states likely contained hundreds of thousands more. Domestic producers made 2.5 to 3 million firearms for the Union during the war, while Union purchasing agents imported 1,165,000 European muskets and rifles.⁶³ The Confederacy imported several hundred-thousand firearms as well. The scale of private gun ownership involves more guesswork, though the U.S. may have had the most heavily armed civilian population in the world after the Civil

⁶⁰ 11k Henrys from 1861-March, 1863; 3k rifles with King's improvements, but without company name, from April 1866-March 1867; and 60k M1866 between 1866-1871. Tom Hall to D. C. Cronin, New Haven, May 18, 1951; Box 8, folder 16, Winchester Repeating Arms Company, Office files (MS:20), McCracken Research Library, Cody, WY.

⁶¹ Export numbers are drawn from Herbert G. Houze, *Winchester Repeating Arms Company: Its History & Development from 1865 to 1981* (Iola, WI: Krause Publications, 2004), 21, 36-41, 51, 59, 65-66, 71, 73, 75.

⁶² For Henrys used in the Civil War, see Pamela Haag, *The Gunning of America: Business and the Making of American Gun Culture* (New York: Basic Books, 2016), 81.

⁶³ Carl L Davis, *Arming the Union; Small Arms in the Civil War* (Port Washington, N.Y: Kennikat Press, 1973), 39, 64, 106.

War. All told, there were certainly more than five million firearms in the U.S. by the early 1870s—probably far more. But even with the implausibly low figure of five million, that would have meant that high-capacity firearms constituted less than 0.002% of all firearms in the United States as late as 1872.

61. Again, I think that the total number of guns in circulation in 1872 was considerably higher than five million, in which case high-capacity firearms would have constituted an even more miniscule percentage of all guns in the U.S. Whether the figure was 0.002% or a something much lower than that, the *Harrel* Plaintiffs are incorrect therefore when they allege that “magazines holding over 10 rounds were commonly possessed already in the 1860s”⁶⁴

III. The Late Arrival and Rapid Regulation of Automatic and Semi-Automatics

A. The era of the slow-load high-capacity firearm, 1870-1900

62. While lever-action rifles took time to make inroads into the U.S. consumer market, they became increasingly popular in the last third of the nineteenth century. Winchester continued to dominate the market. Most other firms that tried to compete in lever-action rifles failed on their own, or were bought out or otherwise outmaneuvered by Winchester’s ruthless corporate savvy (the gunmaker Marlin being the only major exception).⁶⁵ Other rifle makers experimented with alternative designs. For example, Colt’s popular Lightning Slide Action Rifle (around 126,000 produced between 1884-1904) had a twelve- or fifteen-round tube magazine and used a pump-action to cycle rounds into the chamber. Another ingenious Winchester competitor retained the lever-action but incorporated a novel, rotating internal magazine that held twenty-eight or thirty-four rounds. Even with the highest capacity of any repeating rifle ever marketed in the U.S., though, the Evans Lever-Action Rifle enjoyed only modest success in its six-year production run (12,000 produced between 1873-1879).⁶⁶

⁶⁴ *Harrel* Complaint ¶ 71.

⁶⁵ For Winchester’s dominance, see Pamela Haag, *The Gunning of America: Business and the Making of American Gun Culture* (New York: Basic Books, 2016).

⁶⁶ For the Lightning Slide Action and the Evans, see Flayderman, *Flayderman’s Guide to Antique American Firearms and Their Values*, 122–23, 694. Of the Evans, Flayderman writes: “Earliest specimens (extreme rarities with no examples known) held 38 rounds.”

63. In 1898, Florida made it unlawful to “carry or own a Winchester or other repeating rifle or without taking out a license from the county commissioner of the respective counties, before such persons shall be at liberty to carry around with him on his person and in his manual possession such Winchester rifle or other repeating rifle.”⁶⁷ But that law appears to have been unusual. The new rifles seldom seem to have been singled out for regulation on account of their novel high capacity. Why not?

64. The late nineteenth century was an era of slow-load high-capacity firearms. Winchester lever-action rifles and their high-capacity competitors in the last third of the nineteenth century had fixed magazines. Once the internal magazine was empty, the shooter had to reload each round, one by one. As with revolvers (which transitioned away from the laborious cap and ball system to faster-loading metallic cartridges in the 1870s), this round-by-round loading process put a ceiling on the damage a single shooter could inflict on a group of people. Notwithstanding the success of lever-action high-capacity firearms, that ceiling hadn’t gotten dramatically higher since the 1830s. The magazines of most high-capacity rifles held somewhere between ten-fifteen rounds. A person armed with a pair of seven-shot revolvers could fire fourteen rounds without reloading. With the exception of the remarkable but expensive and short-lived Evans rifle, then, a shooter from the time with a repeating rifle had roughly the same capabilities as a shooter with two revolvers in his hands. There were trade-offs, of course. The repeating rifle often had somewhat more power and always had more range and accuracy. Pistols were concealable and easier to use in some circumstances. (Neither arm had the power, range, or accuracy of bolt-action, single-shot rifles that most major militaries of the world continued to favor.)

65. In other words, the advent of Winchester repeaters and their competitors didn’t provoke fundamentally different social problems than those that had been accelerating in the U.S. since the proliferation of revolvers and pepperboxes earlier in the century. The changes

⁶⁷ 1898 Fla. Laws 71, An Act to Regulate the Carrying of Firearms, chap. 4147, § 1: § 1, in Frassetto, “Firearms and Weapons Legislation,” 82.

were of degree, rather than kind. State lawmakers continued to regulate firearms in the name of public safety, as they had since the colonial era. At least forty-eight new laws were passed in the United States between 1868-1903 restricting firearm carry, for example. By the turn of the century, most Americans living in the nation's most populous urban areas were subject to some form of restrictive carry regulations. (Twenty-one more such laws would be enacted between 1900-1934).⁶⁸ Rather than target lever-action rifles, though, lawmakers in this regulatory era usually lumped them together with other kinds of firearms when crafting law. Rifles are invoked alongside other kinds of weapons in Montana's 1879 prohibition against dueling, for instance; in North Carolina's 1869 law against hunting on the Sabbath; in Florida's 1881 law criminalizing the sale of weapons to minors and to those with "unsound minds;" and in unlawful discharge laws in Texas (1871), Wyoming (1879), New Mexico (1886), and Rhode Island (1892).⁶⁹

66. As slow-load high-capacity firearms, lever-action rifles continue to be popular in the United States today. To my knowledge they are rarely subject to special regulation, notwithstanding their high capacities. Section 2C of Illinois criminal statute 5/24-1.9, one of the provisions at issue in this case, specifically exempts firearms that are "manually operated by bolt, pump, lever or slide action" from its definition of "assault weapon."⁷⁰ Section A of Illinois Criminal Statute 5/24-1.10, in its definition of "large capacity feeding device," specifically excludes "an attached tubular device designed to accept, and capable of operating only with, .22 caliber rimfire ammunition." Section A also excludes "a tubular magazine that is contained in a lever-action firearm or any device that has been made permanently inoperable" from the category "large capacity ammunition feeding device." Numerous firearms from the late

⁶⁸ Frassetto, 24–34; Saul Cornell, "The Long Arc of Arms Regulation in Public: From Surety to Permitting, 1328-1928," *UC Davis L. Rev.* 55 (2021): 2591–96.

⁶⁹ Frassetto, "Firearms and Weapons Legislation," Montana: 39; North Carolina: 92; Florida: 76; Texas: 98; Wyoming: 99; New Mexico: 12; Rhode Island: 97. For a nuanced examination of state and local firearm regulations in the second half of the nineteenth century, one attentive to regional difference and minority viewpoints, see Patrick J. Charles, *Armed in America: A History of Gun Rights from Colonial Militias to Concealed Carry* (Amherst, New York: Prometheus Books, 2018), 122–65.

⁷⁰ Section 2C continues, "unless the firearm is a shotgun with a revolving cylinder."

nineteenth century had capacities exceeding ten, in other words, but their slow-load quality made them very different from the firearms commonly subject to regulation today.

67. To appreciate just how different the era of slow-load high-capacity firearms was from our own times, it is instructive to consider which arms among those commercially available before the twentieth century *would* have been subject to regulation under the Protect Illinois Communities Act. It's not a long list. Using *Flayderman's Guide* and excluding guns made in small quantities (fewer than 1000), I cannot identify any firearm that would *definitely* be subject to regulation under Illinois' new magazine limitations. The lever-action Evans Rifle could *arguably* have been subject to the magazine limitations, depending on whether or not the state considered its large and unusual internal magazine a "tubular" device. Based on my reading of the "assault rifle" statute, the Colt 1855 Revolving Shotgun would barely make the list of regulated arms (though only 1100 were ever made, all between 1860-1863).⁷¹

68. Slow-load high-capacity rifles seldom attracted particular regulation because, in an era when revolvers had already become so common, they did not represent a fundamental change in how a single armed individual could threaten public safety. But automatic and semi-automatic weapons with detachable magazines, the world's first viable fast-load high-capacity firearms, did.

B. The era of fast-load high-capacity firearms

69. Lever-action or pump-action rifles require energy transferred from human muscle through an internal mechanism to eject a spent casing and chamber a new round. Likewise single-action revolvers, which require the shooter to pull back the hammer in order to rotate the chamber and position a new round for firing. (Double-action revolvers transfer all this work to the trigger, which when squeezed both rotates the chamber and releases the hammer). Automatic and semi-automatic firearms don't rely on human muscle. Instead, their great innovation is to

⁷¹ 5/24-1.9 includes restrictions on .50 caliber rifles and .50 caliber cartridges that would have pertained to some 19th-century firearms. But .50 caliber rounds charged with black powder did not have the same power as modern .50 caliber rounds with smokeless powder (developed in the late nineteenth century and discussed below).

enlist some of the energy released by the first round to eject the spent casing and chamber the next round.

70. Automatic and semi-automatic firearms first started coming on the market in the 1890s (automatic arms continue to fire as long as the trigger is depressed, while semi-automatic arms require the shooter to squeeze the trigger for each round fired). In addition to advances in machine production, materials science, and precision parts, these revolutionary weapons incorporated three specific innovations. The first was the invention of a reliable mechanism using springs and levers to capture the recoil energy of a fired round in order to chamber the next round. That discovery belongs to Hiram Maxim, creator of the famous Maxim machine gun in 1884. The heavy Maxim gun required at least two people to carry and position, but the idea of using recoil to chamber another round was transferrable to smaller, handheld firearms.

71. Smokeless powder was the second innovation. When fired, black powder leaves residue behind that fouls barrels. This was a manageable annoyance in the era before guns could fire several times a second. With the astonishing rates of fire made possible through Maxim's invention, fouling would be so rapid as to quickly render an automatic fire weapon inoperable. Serendipity intervened to solve this particular problem. In the mid-1880s, right when Maxim was making his breakthrough in harnessing recoil energy, researchers in France perfected a chemical propellant (based on nitrocellulose) that was three times as powerful as black powder, gave off very little smoke, and left behind almost no residue in the barrel. Smokeless powder meant that automatic fire would be a practical technology.

72. Third and finally, automatic- and semi-automatic firearms required a method of feeding cartridges into the weapon. Maxim's machine gun (a heavy device usually placed atop a wheeled carriage) used belts of bullets, stored in crates or boxes. For semi-automatic firearms designed to fire one shot at a time, it would be far more practical to have a magazine. One option was for the weapon to have a fixed magazine: an integral component of the weapon itself, as with the tubular magazines of lever-action rifles. Fixed magazines were impractical for fully automatic weapons, because their high rate of fire would exhaust a fixed magazine almost instantaneously and then the shooter would have to reload, bullet by bullet. But some of the

earliest semi-automatic handguns would be designed around fixed box magazines – the Mauser C96, for example (a German arm introduced in 1896). By the time gunmakers began turning their attention to semi-automatic arms in earnest, however, they had another, more appealing option: detachable magazines. Like self-loading mechanisms and smokeless powder, detachable magazines first emerged in the 1880s and began to be integrated into firearms for the consumer market by the end of the century (timing that helps explain the observation in the *Harrel* Complaint that “magazine bans were unknown in the United States before the 20th century.”⁷²) The first successful firearm with a detachable magazine had been developed by James Paris Lee, to be used with bolt-action rifles. What made detachable magazines so advantageous is that they dramatically accelerated loading. Rather than reloading a weapon bullet-by-bullet (as with lever-action rifles or revolvers), the shooter simply ejected the spent magazine, inserted a full magazine, and resumed firing.⁷³

73. By the early 1890s, then, gunmakers had at their disposal a trio of potent new design features that would become characteristic of most modern automatic and semi-automatic firearms – self-loading mechanisms, smokeless powder ammunition, and detachable magazines. The first pistol to successfully combine all three elements was the Borchardt C-93. Made in Germany in 1893, the Borchardt C-93 had a detachable, 8-round magazine. Competitors were quick to enter the market. John Browning, arguably the most inventive and important of all U.S. gunmakers, finished his first design for a semi-automatic pistol in 1895. Slow to grasp the huge importance of these new guns, Colt declined Browning’s design because the firm didn’t think there wouldn’t be a domestic market for it. Browning tinkered some more and sold the design to Belgium’s Fabrique Nationale. FN produced the gun starting in 1900, with a 7-round detachable

⁷² *Harrel* Complaint ¶ 66.

⁷³ Bolt-action rifles with detachable magazines were adopted by world militaries in the late 1880s and 1890s -- though even as late as 1910, neither the United States Army nor any European army used magazines that exceeded ten rounds as standard service weapons. In the ninth edition of his authoritative treatise *The Gun and its Development* (London: Cassell & Co., 1910), W.W. Greener compared the standard service arms of nineteen countries. Only four (Turkey, Switzerland, Great Britain, and Belgium) employed arms with detachable magazines. See table on pp. 736-37.

magazine, and would go on to sell more than 700,000 of them over the next decade.⁷⁴ Colt soon realized its mistake and revived its partnership with Browning, marketing better and better versions of his semi-automatic pistols starting in 1900. These culminated with the M1911, a handgun with a 7-round detachable magazine. The most copied and influential of all modern handguns, several million M1911s have been sold in the past century. Variations of the gun is still in production today.

74. American firms also helped lead the way in the production of semi-automatic rifles. Winchester and Remington both had models out early in the century. As with the early semi-automatic handguns, some designs had fixed magazines and others had detachable magazines. Light, fully automatic guns (so-called “sub-machine guns”), migrated from the battlefield to the U.S. civilian market. The most notorious was the Thompson submachine gun, aka the “Tommy Gun,” which entered the U.S. market in the 1920s. It was a select fire weapon, meaning it could be set either to automatic or semi-automatic fire. Tommy Guns had box magazines ranging from twenty to thirty rounds, and drum magazines as large as one hundred rounds. Its high price discouraged civilian sales. But this legal, fast-load high-capacity firearm became much sought-after by criminals and law enforcement.

75. Because their detachable magazines enabled shooters to load and reload all at once, rather than round by round, the new fast-load firearms empowered individual shooters to inflict far more damage on more people than had been possible with earlier technologies. So, as they had with the advent of multi-fire pistols in the nineteenth century, lawmakers responded to the novel threat to public safety with legislation. Between 1925 and 1933, twenty-eight states passed laws against fully automatic firearms.⁷⁵ In 1934, Congress passed the first significant federal firearm law in the nation’s history, regulating fully automatic weapons along with several other kinds of guns.

⁷⁴ John Walter, *Hand Gun Story* (Barnsley: Frontline Books, 2008), 220–28.

⁷⁵ Spitzer, “Gun Law History,” 68.

76. Despite the great variety of models produced, prior to the 1930s surprisingly few of the new firearms came with magazines that held more than ten rounds. Perhaps partly because high-capacity magazines were unusual at this time, lawmakers worried about the implications of semi-automatic weapons for public safety do not seem to have conceived of magazines as something they could productively regulate separately from the guns themselves. And yet many clearly thought that the magazine capacity of these firearms was one of the things that made them so dangerous. So those states that did take action regulated the arms themselves, often addressing magazine capacity in the process.

77. Of the seven states that passed laws restricting semi-automatic weapons during the 1920s and 1930s, five of them incorporated capacity ceilings into the law. Different states set different limits, presumably reflecting the different circumstances and views prevailing among their constituents. For Ohio the limit was eighteen. Michigan put it at sixteen. Rhode Island set the limit at twelve. Virginia's limit was seven. South Dakota forbade guns "from which more than five shots or bullets may be rapidly, or automatically, or semi-automatically discharged from a magazine." Three other states – South Carolina, Louisiana, and Illinois – crafted laws that leave a slight ambiguity as to whether they only applied to automatic firearms. But all three chose the relatively low figure of eight rounds for their ceiling, something a fully-automatic weapons could spit out in a single second. That strongly suggests that they, too, had decided to respond to the novel public safety implications of semi-automatic firearms by regulating them.⁷⁶

78. In so doing, these lawmakers acted consistently with American tradition and practice dating back to the early colonial era.

⁷⁶ Spitzer, 68–71.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on Feb. 24, 2023 at Alhambra CA.

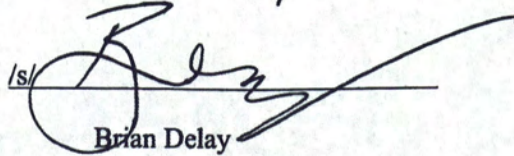
/s/ 
Brian Delay

EXHIBIT A

Brian DeLay

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ACADEMIC POSITIONS

- Preston Hotchkis Chair in the History of the United States, UC Berkeley: 2016-Present
- Associate Professor of History, University of California, Berkeley: Fall 2010 - Present
- Assistant Professor of History, University of California, Berkeley: Fall 2009 – Spring 2010
- Assistant Professor of History, University of Colorado, Boulder: Fall 2004 – Spring 2009
- Lecturer in History, Harvard University: Spring 2004

EDUCATION

- Ph.D., Harvard University, Cambridge, MA: March, 2004
- MA, Harvard University: June, 1998
- B.A., University of Colorado, Boulder, *summa cum laude*: December, 1994

WORK IN PROGRESS:

- “The Myth of Continuity in American Gun Culture,” law-review article in-progress.
- “Aim at Empire: American Revolutions through the Barrel of a Gun, 1750-1825,” book project under contract with W.W. Norton. 167k words drafted as of 6/22.
- “Means of Destruction: Guns, Freedom, and Domination in the Americas before World War II,” book manuscript under contract with W.W. Norton. Research nearly complete.
- “PATH: The Project on Arms Trade History.” Since 2008, I have been working with student research assistants to quantify the global arms trade, from the Napoleonic Wars to WWI. We have been extracting detailed import and export data from manuscript sources and, especially, from annual customs reports published by the main arms-exporting states: The United Kingdom, the United States, Belgium, and France (Germany and Spain still underway). We are nearly finished locating sources and doing the laborious work of data entry. Our relational database now has nearly 112,000 entries capturing the global movement of all kinds of war material, from percussion caps to artillery, from 1815-1915. We will soon shift to data analysis and begin applying for external funding to turn the dataset into an online tool freely available to researchers around the world.

PUBLICATIONS AND RESEARCH

Refereed Publications

- “The Arms Trade & American Revolutions,” forthcoming in the *American Historical Review*.
- “Foreign Relations between Indigenous Polities, 1820-1900,” in Kristin Hoganson and Jay Sexton, eds., *The Cambridge History of America and the World, Vol 2: 1812-1900* (Cambridge University Press, 2022), 387-411.
- “Indian Polities, Empire, and Nineteenth-Century American Foreign Relations” *Diplomatic History* 39:5 (December 2015), 927-42.

Refereed Publications (cont.)

- “Watson and the Shark,” chapter in Brooke Blower and Mark Philip Bradley, eds., [*The Familiar Made Strange: American Icons and Artifacts after the Transnational Turn*](#) (Ithaca: Cornell University Press, 2015).
- “Blood Talk: Violence and Belonging in the Navajo-New Mexican Borderland,” in Juliana Barr and Edward Countryman, eds., [*Contested Spaces of Early America*](#), University of Pennsylvania Press, 2014, pp. 229-256.
- Editor, [*North American Borderlands*](#). Routledge, 2012.
- [*War of a Thousand Deserts: Indian Raids and the U.S.-Mexican War*](#). New Haven: Yale University Press, 2008 [paperback, 2009].
- “[The Wider World of the Handsome Man: Southern Plains Indians Invade Mexico, 1830-1846](#),” *Journal of the Early Republic* 27 (March, 2007), 83-113
- “[Independent Indians and the U.S.-Mexican War](#),” *American Historical Review* 112 (Feb., 2007), 35-68.

Other Publications:

- “Utilitarian, State-Led, and Collective: American Gun Culture on the Eve of Revolution,” essay forthcoming in [*The Panorama*](#), 2023.
- “American Guns, Mexico’s Trials,” [*Bulletin of the American Academy of Arts and Sciences*](#), Spring, 2020
- “[A Misfire on the Second Amendment](#),” extended review of Roxanne Dunbar-Ortiz, *Loaded: A Disarming History of the Second Amendment* for *Reviews in American History* 47:3, Sept. 2019
- Co-author with James West Davidson, William E. Gienapp, Christine Leigh Heyrman, Mark H. Lytle, and Michael B. Stoff, [*Experience History: Interpreting America’s Past*](#) [Formerly *Nation of Nations: A Narrative History of the American Republic*], McGraw-Hill (9th ed., 2019). *Concise version: [*US/A History*](#) (9th ed., 2022).
- “[How the U.S. Government Created and Coddled the Arms Industry](#),” *The Conversation*, October 2017
- “[How Not to Arm a State: American Guns and the Crisis Of Governance In Mexico, Nineteenth and Twenty-First Centuries](#)” [24th Annual W.P. Whitsett Lecture], *Southern California Quarterly* 95:1 (Spring 2013), pp. 5-23.
- “Oportunismo, ansiedad, idealismo: los impulsos Estadunidenses durante la intervención Francesa en México,” in Jean Meyer, ed., *Memorias del Simposio Internacional 5 de Mayo*, El Colegio de Puebla, 2013, pp 269-288.
- “Comanches in the Cast: Remembering Mexico’s ‘Eminently National War,’” in Charles Faulhaber, ed., *The Bancroft Library at 150: A Sesquicentennial Symposium*, Berkeley: University of California Press, 2011.
- “How Indians Shaped the Era of the U.S.-Mexican War,” abbreviated version of Independent Indians and the U.S.-Mexican War,” in Pekka Hämäläinen and Benjamin H. Johnson, eds., *Major Problems in the History of North American Borderlands*, Wadsworth, 2011.
- [Response](#) to Daniel Walker Howe, Andrés Reséndez, Ned Blackhawk, and Leonard Sadosky’s essays in H-SHEAR roundtable on *War of a Thousand Deserts*, Nov. 2010.

Other Publications (cont.)

- [Top Young Historian essay](#), Historians News Network, October 2010.
- [“Forgotten Foes,”](#) *Berkeley Review of Latin American Studies* (Fall 2010), 14-19.
- [“James Madison and the Scolds,”](#) Review of J. C. A. Stagg, *Borderlines in the Borderlands: James Madison and the Spanish American Frontier, 1776-1821*, *Passport* 40:3 (January 2010).
- [“Why Mexico Fought,”](#) review of Timothy J. Henderson, *A Glorious Defeat: Mexico and its War with the United States*, *Diplomatic History* 33:1 (January 2010).
- [“19th Century Lessons for Today’s Drug War Policies,”](#) *The Chronicle Review*, Tuesday, July 28, 2009,
- [“It’s Time We Remembered the Role of Indians in the U.S.-Mexican War,”](#) *History News Network*, 3/9/2009
- [“War of a Thousand Deserts,”](#) on *The Page 99 Test*,
- “Navajo,” “Popé,” and “Pueblo Indians,” in Billy G. Smith, ed. *Colonization and Settlement (1585-1763)*, Volume 2 in the 10-volume *Facts on File Encyclopedia of American History* (2003)
- [“Narrative Style and Indian Actors in the Seven Years’ War,”](#) *Common-Place: The Interactive Journal of Early American History*, 1 (1), September 2000.

PRIZES, HONORS, & AWARDS

- Visiting Scholar, University of Melbourne, October 2017
- Fulbright Distinguished Lecturer, Doshisha American Studies Seminar (Kyoto), 2014
- Bryce Wood Book Award for the outstanding book on Latin America in the social sciences and humanities published in English, Latin American Studies Association, 2010
- HNN “Top Young Historian,” November 2010
- W. Turrentine Jackson (biennial) Award for best first book on any aspect of the history of the American West, Western History Association, 2009
- Robert M. Utley Award for best book published on the military history of the frontier and western North America, Western History Association, 2009
- Southwest Book Award, sponsored by the Border Regional Library Association, 2009
- James Broussard Best 1st book prize, Society for Historians of the Early American Republic, 2008
- Norris and Carol Hundley Best Book Award, Pacific Coast Branch of the AHA, 2008
- The Sons of the Republic of Texas Summerfield G. Roberts Best Book Award, 2008
- Finalist, Francis Parkman Prize from the Society of American Historians, 2008
- Finalist for the Clements Prize for the Best Nonfiction Book on Southwestern Americana, 2008
- Honorable Mention, TSHA Kate Brooks Bates Award for Historical Research, 2008
- Finalist for the PROSE Award in the U.S. History and Biography/Autobiography category, sponsored by the Association of American Publishers, 2008
- Organization of American Historians Distinguished Lecturer, 2008-2011
- Bolton-Cutter Award for best borderlands article, Western History Association, 2008
- Robert F. Heizer Prize for the best article in the field of ethnohistory, 2008

PRIZES, HONORS, & AWARDS (cont.)

- CLAH Article Prize, Conference on Latin American History, 2008
- Stuart Bernath Article Prize, Society for Historians of American Foreign Relations, 2008
- Phi Alpha Theta/Westerners International Prize for Best Dissertation, 2005
- Harold K. Gross Prize from Harvard University for the dissertation “demonstrating the greatest promise of a distinguished career in historical research,” 2004
- University of Colorado Residence Life Academic Teaching Award, 2005
- Derek Bok Center Awards for Excellence in Teaching, Spring 1999 and Fall 1999

GRANTS AND FELLOWSHIPS

- John Simon Guggenheim Foundation Fellowship, 2019-2020
- Marta Sutton Weeks Fellow, Stanford Humanities Center, 2019-2020
- Center for Advanced Studies in Behavioral Sciences Fellowship, 2019-2020 (declined)
- American Council of Learned Societies Fellowship, 2017-2018
- Harry Frank Guggenheim Foundation Fellowship, 2013-14'
- UC Humanities Research Fellowship Grant, 2013-14'
- UC Berkeley CORE Research Bridging Grant, 2012-14'
- Charles A. Ryskamp Research Fellowship, American Council of Learned Societies, 2010-2011
- Donald T. Harrington Fellowship, UT Austin, 2009-2010 (Declined).
- University of Colorado Graduate Committee on the Arts and Humanities Research Grant, 2008.
- American Philosophical Society / British Academy Fellowship, 2008.
- Junior Faculty Development Award, University of Colorado, 2007.
- Bill and Rita Clements Research Fellowship for the Study of Southwestern Americana, Full Year, Clements Center, Southern Methodist University, Dallas, TX, 2005-2006.
- Postdoctoral Fellowship, Full Year, Huntington Library, San Marino, CA, 2005-2006 (Declined)
- Postdoctoral Fellowship, Full Year, Newberry Library, Chicago, IL, 2005-2006 (Declined)
- Packard Foundation Dissertation Finishing Grant, 2002-2003
- American Philosophical Society, Philips Fund Grant for Native American Research, 2001
- David Rockefeller Center for Latin American Studies Summer Grant 2001
- Department of Education Foreign Language Area Studies Grant, 2000-01
- Mellon Summer Field Research Travel Grants, 1999, 2000, 2001
- Harvard History Department Summer Travel Grant, 2000, 2001
- Graduate Society Term Time Research Fellowship, Spring 2000
- Harvard Graduate Student Council Summer Travel Grant, 1999
- The Charles Warren Center Fellowships for Summer Research, 1998, 1999
- The Graduate Society's Summer Fellowship, Harvard University, 1998
- General Artemas Ward Fellowship, Harvard University, 1996-97, 1997-98

BOOK REVIEWS

- Review of Jonathan Grant, *Between Depression and Disarmament: The International Armaments Business, 1919-1939*, in the *American Historical Review* 25:3, June 2020
- Review of David J. Silverman, *Thundersticks: Firearms and the Violent Transformation of Native America*, in the *American Historical Review*, Oct. 2017
- Review of Rachel St. John, *Line in the Sand: A History of the Western U.S.-Mexico Border*, in the *Pacific Historical Review*, Aug. 2012.
- Review of *Bridging National Borders in North America: Transnational and Comparative Histories*, Edited by Benjamin H. Johnson and Andrew R. Graybill, *Hispanic American Historical Review*, Feb. 2012.
- Review of *Fiasco: George Clinton Gardner's Correspondence from the U.S.-Mexico Boundary Survey, 1849-1854*. Edited David J. Weber and Jane Lenz Elder, *New Mexico Historical Review* 86:3, Summer 2011, 526-28.
- Review of Juliana Barr's *Peace Came in the Form of a Woman: Indians and Spaniards in the Texas Borderlands*, for the *American Historical Review* 113 (June 2008), 878-79.
- Review of Samuel Truett's *Fugitive Landscapes: The Forgotten History of the U.S.-Mexican Borderlands*, for *Labor: Studies of Working-Class History of the Americas* 4:4 (2007), 130-32.
- Review of Gary Clayton Anderson's *The Conquest of Texas: Ethnic Cleansing in the Promised Land, 1820-1875*, for the *Journal of American History* 93:2 (2006), 530-31.
- Review of Samuel Truett and Elliott Young, eds., *Continental Crossroads: Remapping U.S.-Mexican Borderlands History*, for the *Hispanic American Historical Review* 86:4 (2006), 864-65.
- Review of Rosemary King's *Border Confluences: Borderland Narratives from the Mexican War to the Present*, for *New Mexico Historical Review*, Fall 2005.
- Review of Edward A. Goodall, *Sketches of Amerindian Tribes, 1841-1843*, for *Itinerario: The European Journal of Overseas History*, Fall 2004 (28:3).
- Combined review of Alex D. Krieger's *We Came Naked and Barefoot: The Journey of Cabeza de Vaca Across North America* and Rolena Adorno's and Patrick Charles Pautz's *The Narrative of Cabeza de Vaca* for the *Southwestern Historical Quarterly*, April 2004.
- Review of Richard Flint's "Great Cruelties Have Been Reported:" *The 1544 Investigation of the Coronado Expedition*, for the *Southwestern Historical Quarterly*, October 2003.
- Review of Allen G. Hatley's *The Indian Wars in Stephen F. Austin's Texas Colony, 1822-1835*, for the *Southwestern Historical Quarterly*, October 2001.

PRESENTATIONS & INVITED TALKS

- Roundtable participant for "After 1800: Rethinking Revolution and Counter-Revolution in the Atlantic World," USC/Écoles des Hautes Études en Sciences Sociales, June 2022
- Roundtable participant for "Empire and U.S. Foreign Relations," Society for Historians of American Foreign Relations, June 2022
- "Tribe and Nation in North America," comment for [roundtable](#) on Sumit Guha's *Tribe and State in Asia through Twenty-Five Centuries*, Institute for Historical Studies, UT Austin, November 2021.

PRESENTATIONS & INVITED TALKS (cont.)

- "What is History Now," Roundtable participant at UC Berkeley History Colloquium, October 2021
- "Tsiyu Gansini's Predicament: Guns, Ammunition, & Cherokee Choices before the Revolution," Rocky Mountain Seminar in Early American History, Oct., 2021
- "Aim at Empire," talk at the UC Berkeley Institute for International Studies, Sept. 2021
- Roundtable participant in "the U.S.-Mexican Borderlands" for Janet Napolitano and Daniel Sargent's class "Intro to Security Policy," GSP, Berkeley, Sept. 2021
- "Arms Trading and American Revolutions," paper for roundtable on Transnational Revolutionary History, Society for Historians of the Early American Republic, July 2021
- Roundtable on Armed Conflict and Military History, Society for Historians of American Foreign Relations annual conference, June 2021.
- "[Guns Across Borders](#)," presentation at Revolutions Across Borders symposium, Newberry Library, June, 2021.
- "[Indigenous Agency, Whiggish History, and 'the Conquest of Mexico'](#)," American Historical Association, Jan. 2021
- "Arms Trading and the Fates of American Revolutions," invited paper given in the Cambridge University American History Seminar, March 1, 2021
- "Indigenous Agency, Whiggish History, and 'the Conquest of Mexico,'" Conference on Latin American History, Jan. 2021
- "Aim at Empire," presentation at the Stanford Humanities Center, December 2019
- "America's Guns, Mexico's Trials," Morton Mandel Public Lecture given at the invitation of the American Academy of Arts and Sciences, Berkeley, CA, Nov. 20, 2019
- "Arms Trading & New World Decolonization," paper presented at University College, London, May 2019.
- "The Texas Gun Frontier & the Travails of Mexican History," keynote at the 1st Biennial Symposium on Borderlands & Borders, Texas A&M University, San Antonio, April 2019
- "Guns and Revolution: The Arms Trade and the First Global Wave of Decolonization," Boston College, September 2018
- "Migration and the History of Immigration Enforcement on the U.S.-Mexican Border," at conference on Borders, Borderlands, and Migration, Institute of Slavic, East European, and Eurasian Studies and the Central European University, UC Berkeley, Sept. 2018
- "Shoot the State," roundtable presentation at the Western History Association, Nov. 2017
- "The Texas Gun Frontier and the Travails of Mexican History," Gary L. Nall Lecture, West Texas A&M, October 2017
- "Guns and Revolution: The Arms Trade and the Making of American Revolutions, 1774-1825," University of Melbourne, October 2017
- "Dam-Breaking: How the Arms Trade Enabled the First Global Wave of Decolonization, 1775-1825," New York University, September 2017
- "The Most Dangerous Man You've Never Heard Of," invited presentation at symposium "Small Arms, Big Business: Trading Arms - Political, Cultural and Ethical Dimensions in Historical and Global Perspectives," Zentrum für Interdisziplinäre Forschung (ZIF), Bielefeld, Germany, June 2017.

PRESENTATIONS & INVITED TALKS (cont.)

- Organizer/chair and presenter for roundtable "Arsenal to the World: The Missing History of the American Arms Trade," OAH April 2017
- "The Ungovernable Rio Grande," Cal History Homecoming talk, February 2017
- "The Texas Gun Frontier and the Travails of Mexican History, or, No More Weapons! (Unless they're for Us)," CENFAD Colloquium, Temple University, January 2017
- "The Texas Gun Frontier and the Travails of Mexican History, or, No More Weapons! (Unless they're for Us)," University of Connecticut, October, 2016
- "Dambreaking: Guns, Capitalism, and the Independence of the Americas," Harvard University, October 2016
- "How Transimperial Arms Bazaars Stabilized Instability in the Greater Caribbean," Rothermere Institute, Oxford University, May 2016
- "The International Arms Trade and the Brittle State in Mexico, 1810-1920," University of Chicago Latin American Seminar, December 2015
- "Dambreaking: Guns, Capitalism, and the Independence of the Americas," Northwestern University, December 2015
- "Guns and the Making of the Modern Americas," Stanford University, November 2015
- "The Texas Gun Frontier and the Travails of Mexican History," University of Texas, Austin, November 2015
- "Dambreaking: Guns, Capitalism, and the Independence of the Americas," University of Cincinnati, September 2015
- "Dambreaking: Guns, Capitalism, and the Independence of the Americas," Society for Historians of American Foreign Relations, Conference Keynote, June 2015
- "War of a Thousand Deserts," San Jacinto Symposium, Houston, TX, April 2015
- "Dambreaking: Guns, Mercantilism, and the Demolition of Europe's America," the James P. Jones endowed lecture, Florida State University, March 2015
- "Dambreaking: Mercantilism, Armaments, and the Demolition of Europe's America," Indiana University, October 10, 2014
- "Gotham's Gun Barons: New York City Arms the Americas, 1865-1934," Doshisha University, Kyoto, Japan, July 25, 2014
- "How Borderland Indians Shaped the Era of the U.S.-Mexican War," Keynote address for the 2014 Doshisha American Studies Seminar, Kyoto, July 26, 2014
- "War and Trade," Roundtable on new histories of trade, Society for Historians of American Foreign Relations, Lexington, June 2014
- "Gotham's Gun Barons: New York City Arms the Americas, 1865-1934," Cambridge University, November 25, 2013
- "A Protest of Arms: Guns and the Brittle State in Mexico, 1810-1920," Cambridge University Borderlands Workshop, November 11, 2013
- "Gotham's Gun Barons: New York City Arms the Americas," Oxford University, October 21, 2013
- "Marcellus Hartley: The Most Dangerous Man You've Never Heard Of," OAH April 2013
- "A Good Story," invited presentation to admitted students at Cal Day, April 20, 2013

PRESENTATIONS & INVITED TALKS (cont.)

- “Beware the Metanarrative; or, How I Acquired My Resistance to Resistance,” Kaplan Lecture, University of Pennsylvania, March 2013
- “Domestic Dependent Notions: American Indians and the First Few Pages of American Empire,” American Studies Association meeting, San Juan, Nov. 2013
- “Indian History and the History of American Foreign Relations,” Society for Historians of American Foreign Relations annual conference, June 2012
- “How Not to Arm a State: American Guns and the Mexican National Project, 1810-1920,” Society for Historians of American Foreign Relations annual conference, June 2012
- “Opportunism, Anxiety, and Idealism: U.S. Impulses during the French Intervention in Mexico,” invited paper at el Simposio Internacional 5 de Mayo de Mexico, Biblioteca Palafoxiana, Puebla, Mexico, May 2012.
- “How Not to Arm a State: American Guns and the Mexican National Project, 1810-1920,” Organization of American Historians annual conference, April 2012
- Chair, roundtable on the state of the field in U.S.-Mexico Borderlands History, Organization of American Historians annual conference, April 2012
- “So Far From God, So Close to the Gun Store: Borderlands Arms Trading and the Travails of Mexican History,” 26th Annual W.P. Whitsett Lecture, CSU Northridge, March 2012
- “War of a Thousand Deserts,” at the Tattered Cover Bookstore, Denver, CO, March 2012
- [“Frontiers, Borderlands, and Transnational History,”](#) presentation at Huntington Library symposium on the Significance of the Frontier in an Age of Transnational History, Feb. 2012 [Audio in file#2]
- “Sailing Backwards on Mexico’s ‘Iron River of Guns’: The Political Economy of the Arms Trade in the 19th and 21st Century’s, Harvard Kennedy School, Feb. 2012
- “The Drug War and Borderlands History,” Cal Alumni Day, Oct. 2011.
- “Blood Talk: Violence and Belonging in the Navajo-New Mexican Borderland,” invited presentation at Stanford University’s Comparative Wests Seminar, April 2011
- “Blood Talk: Violence and Belonging in the Navajo-New Mexican Borderland,” invited talk for round two of Contested Spaces in Early America symposium, Clements Center for Southwest Studies, Southern Methodist University, Dallas, TX, April, 2011
- “Blood Talk: People and Peoples in the Navajo-New Mexican Borderland,” invited talk at UCLA’s American Indian Studies Center, March 2011
- “Blood Talk: People and Peoples in the Navajo-New Mexican Borderland,” invited talk presentation the USC-Huntington Early Modern Studies Institute and the Autry Museum of Western Heritage, March 2011
- “People and Peoples in Borderland Relations: Blood Talk in New Mexico,” invited talk for Contested Spaces in Early America symposium, McNeil Center for Early American Studies, University of Pennsylvania, Philadelphia, PA October 2010
- “How Indians Shaped the U.S.-Mexican War,” invited talk for the Bay Area Latin America Forum, Berkeley, CA September 2010
- “Indians and the U.S.-Mexican War,” invited talk at Teaching Conference on History, University of North Texas, September 2010

PRESENTATIONS & INVITED TALKS (cont.)

- “Patterns of Violence in Navajo-New Mexican Relations,” Pacific Coast Branch of the American Historical Association annual meeting, Santa Clara CA, August 2010
- “States and Stateless Peoples in George Herring’s *From Colony to Superpower*,” Society for Historians of American Foreign Relations annual meeting, Madison, WI, June 2010
- “Indians, Politics, and 19th-Century American Empire,” UC Berkeley-Stanford-UC Davis faculty dinner, April 2010
- “War of a Thousand Deserts,” invited Keynote Address to the James Rawley Conference in the Humanities, University of Nebraska, Lincoln, April 2010
- “19th Century Lessons for Today’s Drug War Policies,” History as a Resource for Decision Making, UC Berkeley, March 2010
- “Comanches in the Cast: Recovering Mexico’s ‘Eminently National War, 1830-1846,” Bancroft Sesquicentennial Symposium, Berkeley, CA, March 2010.
- “Mexico, Native Politics, and the Continuous 19th Century American Empire,” invited talk for the Harvard Symposium on 19th Century Empire, Cambridge, MA April 2009
- “War of a Thousand Deserts: How Indians Shaped the Era of the U.S.-Mexican War,” paper presented to the El Paso History Museum, February 2009
- “War of a Thousand Deserts: How Indians Shaped the Era of the U.S.-Mexican War,” paper presented at the Texas Community College Teachers Association Conference, Austin, Feb. 2009
- “Putting Indians into the U.S.-Mexican War,” paper presented at the Organization of American Historians annual meeting, New York, March 2008.
- “Military History and Non-State Peoples,” roundtable paper presented at the American Historical Association conference, Washington D.C., Jan. 2008.
- “The French and Indian War,” public talk for the High Plains Chautauqua, Greeley, CO, Aug. 8, 2007
- “The Comanche Lens: Seeing Nation States through Tribes on the U.S.-Mexican Borderlands,” invited talk at the University of San Diego Trans-Border Institute, April. 2007.
- “The Comanche Lens: Seeing Nation States through Tribes on the U.S.-Mexican Borderlands,” invited talk at the George and Anne Richards Civil War Era Center, Penn State University, Jan. 2007.
- “Independent Indians, the U.S.-Mexican War, and the Reshaping of North America,” paper presented at the American Historical Association conference, Atlanta, GA, Jan. 2007 (*Panel organizer*)
- “Opportunity Costs: Southern Comanches between Mexico and Texas, 1836-1846,” paper presented at the Filson Institute’s Comparative Borderlands Conference, Louisville, KY, Oct. 2006.
- “The War of a Thousand Deserts: Indians, the U.S.-Mexican War, and the Reshaping of North America,” Clements Center Brown Bag series, Southern Methodist University, Feb. 2006.
- “Independent Indians and Borderlands Scholarship in the Americas” roundtable presentation at the Conference on Latin American History, Philadelphia, PA, Jan. 2006.

PRESENTATIONS & INVITED TALKS (cont.)

- “Comanches in the Cast: Remembering Mexico’s ‘Eminently National War,’ 1830-1846,” paper presented at the Latin American Studies Association Conference, Los Vegas, NV, Oct. 2004
- Invited comment on Marie Duggan’s “Franciscan Missions as Institutions of Economic Development: The Case of California, 1769-1832,” at the Boston Area Latin American Seminar, Dec. 2003
- Invited comment on David J. Weber’s “Spaniards and their Savages in the Age of Enlightenment,” at the Boston Area Latin American Seminar, Oct. 2002.
- “Mexicans, Indians, and Anglo-Americans: Ethnic Conflict and Territorial Expansion, 1776-1854,” paper presented at the Harvard Ethnic Studies Conference, Cambridge, MA, Feb. 2002.
- “Americans Watching: Savage Indians, Suffering Mexicans, and Manifest Failures, 1835-1854,” paper presented at the American Historical Association conference, San Francisco, Jan. 2002.
- “The War of a Thousand Deserts: Indian Power and the Contest for Northern Mexico, 1835-1854,” paper presented at the Conference on Latin American History, San Francisco, Jan. 2002
- “Indian Power and the Fragmentation of Northern Mexico, 1835-1846,” paper presented at the Western History Association Conference, San Diego, CA, Oct. 2001. (*Panel organizer*)
- “Americans Watching: Savage Indians, Suffering Mexicans, and Manifest Failures, 1835-1854,” paper presented at Global America: The New International History Conference, Harvard, April 2001.
- Commentator at roundtable discussion of Fred Anderson’s *Crucible of War* at the Charles Warren Center for Studies in American History, Harvard University, Feb. 2000.

CONSULTING

- Submitted declaration for the Attorney General’s Office of Washington D.C. in defense of district law limiting high-capacity gun magazines in *Hanson et. al., v. District of Columbia* (U.S. District Court of Columbia, Nov. 2022)
- Submitted declaration and testified as expert witness for the Attorney General’s Office of the State of Oregon in defense of state law limiting high-capacity gun magazines in *Joseph Arnold et. al., v. Kate Brown*, (Circuit Court, State of Oregon, Harney County, Dec. 2022)
- Submitted declaration for Attorney General’s Office of the State of Oregon in defense of state law limiting high-capacity gun magazines in *Firearms Federation, et. al., v. Kate Brown, et. al.* (United States District Court, State of Oregon, Feb., 2023).
- Submitted declaration for Attorney General’s Office of the State of Illinois in defense of its law limiting assault weapons and high-capacity magazines in *Harrel et. al. v. Kwame Raoul, et. al.*, (United States District Court for the Southern District of Illinois, Feb. 2023)

TEACHING

Classes Offered at UC Berkeley

- HIST 7a: Lower-division lecture – *North America through Reconstruction*, 2011, 2012, 2015, 2018, 2020, 2021 (always in fall)
- HIST 100: Upper-Division Lecture - *American Encounters*, Fall 2009
- HIST 101: Undergraduate Research Seminar - *Senior Thesis Seminar* Spring 2010; Spring 2012, Spring 2013, Fall 2014, Spring 2022, Spring 2023
- HIST 103: Undergraduate Reading Seminars:
 - *Borderlands in North America*, Fall 2009
 - *The U.S. and Latin America in the 19th C.*, Spring 2012
 - *The Border* (reading seminar), Fall 2016
- HIST 104: Undergraduate lecture/seminar- *The Craft of History*, Spring 2015, Spring 2017
- HIST 135B: Upper-division lecture - *Encounter and Conquest in Indigenous America*, Spring 2019, Spring 2022, Spring 2023
- HIST 280: Graduate Reading Seminars:
 - *Borderlands in World History*, Fall 2011
 - *The Making of the Modern World, through the Age of Revolutions* (Sem.), Fall 2014 (co-taught with Daniel Sargent)
 - *The Making of the Modern World, since the Age of Revolutions* (Sem.) Spring 2015 (co-taught with Daniel Sargent)
 - *Borderlands in North America* (reading seminar), Spring 2015
 - *Native North American History* (reading seminar), Spring 2021
- HIST 285: Graduate Research Seminars:
 - *American History before 1900*, Spring 2013, Fall 2015
 - *Topics in American History*, Fall 2018
- HIST 375: Graduate Sem: *Teaching History at the University* (pedagogy), Spring 2021

Classes Offered at the University of Colorado

- HIST 1015: Lower-Division lecture - *U.S. History to 1865*, Fall 07', Fall 08'
- HIST 1035: Lower-Division lecture - *Honors: United States History to 1865*, Fall 04'
- HIST 2015: Lower-Division lecture - *Early America*, Fall 06'
- HIST 3050: Undergraduate seminar - *The Arms Trade in World History*, Spring 09'
- HIST 3317: Undergraduate seminar - *Interethnic Borderlands in the American West*, Fall 04', Fall 07'
- HIST 4115: Upper-Division lecture - *Natives and Newcomers in the Americas*, Fall 06', Spring 08'
- HIST 4327: Upper-Division lecture - *Novelty, Conflict, and Adaptation in the American Southwest*, Spring 05', Spring 08'
- HIST 4617: Upper-Division lecture - *Native North American History: Origins to 1815*, Spring 05', Spring 07', Spring 09'
- HIST 5106: Graduate Reading seminar - *Colloquium: U.S. History to 1865*, Fall 08'
- HIST 6030: Grad. Reading sem - *Frontiers and Borderlands in the Americas*, Spring 07'

PhD Students (1) = advisor/co-advisor; (2) 2nd reader

- **Current Students:**

- Sophie FitzMaurice (1)
 - Dissertation: “The Material Telegraph: Technology, Environment, and Empire in North America, 1846-1920.”
- J.T. Jamieson (2)
 - Dissertation: “‘A Mere Change of Location’: Emigration and American Culture, 1800-1860.”
- Russ Weber
 - Dissertation: Emotions and the political history of the early republic.
- Kyle Jackson (1)
 - Dissertation: New Orleans and Pan-Americanism before WWI
- Noah Ramage (1)
 - Dissertation: The Cherokee Nation in the late 19th Century
- Annabel LaBrecque (1)
 - “Deep Histories of Salt in North America”
- Julia Frankenbach (1)
 - Indigenous labor in the Bay Area during the Mission Era

- **Former Students:**

- Ariel Ron (2), Glenn M. Linden Associate Professor of the U.S. Civil War Era, Southern Methodist University
 - Dissertation: “Developing the Country: ‘Scientific Agriculture’ and the Roots of the Republican Party” (2012)
- Mattie Harper, Grantmaking Officer, Bush Foundation
 - Dissertation (Ethnic Studies): “French Africans in Ojibwe Country: Negotiating Marriage, Identity, and Race, 1780-1890” (2012)
- Melisa Galván (2), Associate Professor, California State University, Northridge
 - Dissertation: “From Contraband Capital to Border City: Matamoros, 1746-1848,” (2013)
- Allie McLafferty, History Instructor, St. Stephens Episcopal School, Austin, TX
 - Dissertation: “‘A Plumb Craving for the Other Color’: White Men, Non-White Women, and the Sexual Crisis in Antebellum America,” (2013)
- Jennifer Carlson, Associate Professor of Sociology and Government & Public Policy, University of Arizona
 - Dissertation (Sociology): “Clinging to their Guns?: The New Politics of Gun Carry in Everyday Life,” 2013
- Delia Hagen (1), Founder & Director of Hagen Historical Consulting, Missoula, Montana
 - Dissertation: “Northern Plains Borders and the People In Between, 1860-1940” 2015

▪ **Former Students (cont.)**

- Bathsheba Demuth (2), Dean's Associate Professor of History and Environment & Society, Brown University
 - Dissertation: "The Power of Place: Ideology and Ecology in the Bering Strait, 1848-1988" (2016)
- Alberto Garcia (2), Assistant Professor, San José State University
 - Dissertation: "The Politics of Bracero Migration" (2016)
- Robert Lee (2), University Lecturer, Cambridge University
 - Dissertation: "Louisiana Purchases: The U.S.-Indian Treaty System in the Missouri River Valley" (2017)
- Erica Lee (1), Management and Program Analyst at FDIC, Washington, D.C.
 - Dissertation: "Sanctuaries into Fortresses: Refugees and the Limits of Obligation in Progressive-Era America" (2017)
- Javier Cikota (2), Assistant Professor, Bowdoin College
 - Dissertation: "Frontier Justice: State, Law, and Society in Patagonia, 1880-1940" (2017)
- David Tamayo (2), Assistant Professor, University of Michigan
 - Dissertation: "Serving the Nation: Rotary and Lions Clubs, the Mexican Middle Classes, and the Post-Revolutionary State, 1920s-1960s" (2018)
- Julia Lewandowski (1), Assistant Professor, California State University, San Marcos
 - Dissertation: "Small Victories: Indigenous Proprietors Across Empires in North America" (2019)
- Franklin Sammons (1), Assistant Professor, Washington & Lee
 - Dissertation: "Yazoo's Settlement: Finance, Law, and Dispossession in the Southeastern Borderlands, 1789-1820"

SERVICE

University of California, Berkeley History Department

- Search Committees:
 - Native North American History Search Committee, 2021-22'
 - US West Search Committee, 2018-19'
 - 20th Century Latin America Search Committee, 2014-15'
 - U.S. History Search Committee (Chair), 2012-13'
 - Latin America Search Committee, 2011-12'
- Endowed Chairs Committee, 2021-22'
- AC-5 Grad Admissions Committee, 2020-21', 2022-23'
- Governance Task Force Committee, 2014-15'
- Committee on the History Undergraduate Major,
 - 2011-12' (chair, spring 2012); 2015-16'; 2016-17' (chair)
- Honors Committee, 2009-10'
- Admissions Committee, US Field, 2009-10'
- Reentry and Disabled Student Advisor, 2009-10'
- Faculty co-sponsor, with Daniel Sargent, of the Berkeley International and Global History Conference (BIG-H), 2011-2017

Service, cont.

- Co-founder (with Daniel Sargent) and co-organizer (since 2021 with Rebecca Herman) of the [Berkeley Global History Seminar](#), 2010-Present.

University of California, Berkeley, Campus Service

- Senate Liaison for external review of UC Berkeley Department of Ethnic Studies, 2021
- Letters & Sciences Executive Committee, 2020-2023
 - L&S Executive Committee Liaison for the external review of UC Berkeley Department of Slavic Languages & Literatures, 2022
- Berkeley Institute for International Studies (IIS)
 - IIS Directorship Search Committee, 2021
 - IIS Faculty Board, 2020-present
 - IIS Simpson Award Committee, 2012; 2013; 2015 (chair); 2016-2019.
- Bancroft Library
 - Friends of the Bancroft Library Council, 2021-present
 - Bancroft Library Prize Committee, 2015, 2016, 2017, 2019, 2020
- Academic Senate Committee on Committees, 2015 – 2017
- American Cultures Senate Subcommittee, 2011-12'

University of Colorado History Department

- Departmental Undergraduate Studies Committee, 2007-08'
- Departmental Executive Committee, 2006-07'
- Robert G. Athearn Lecture organizer, 2006
- Judge for Colorado History Day, Spring 2005
- History Department Graduate Studies Committee, 2004-05', 2008-09'
- Phi Alpha Theta/History Club Advisor, Fall 2004

Professional Service, Memberships, K-12 and Public Outreach

- Professional Service:
 - Series Editor with Steven Hahn and Amy Dru Stanley for University of Pennsylvania Press book series, "[America in the Nineteenth Century](#)", 2014-present. Within the series, I have had served as faculty editor for the following books, working closely with their authors throughout the process:
 - William Kiser, *Borderlands of Slavery: The Struggle Over Captivity and Peonage in the American Southwest* (2017)
 - Noelani Arista, *The Kingdom and the Republic: Sovereign Hawai'i and the Early United States* (2019)
 - Katherine Bjork, *Prairie Imperialists: The Indian Country Origins of American Empire* (2019)
 - Alaina Roberts, *I've been Here All the While: Black Freedom on Native Land* (2021)
 - Paul Conrad, *The Apache Diaspora: Four Centuries of Displacement and Survival* (2021)

- **Professional Service, Memberships, K-12 and Public Outreach (cont.)**
 - William Kiser, *Illusions of Empire: The Civil War and Reconstruction in the U.S.-Mexican Borderlands* (2021)
 - Editorial Board Service:
 - *Reviews in American History*, 2019-2022
 - *Journal of the Early Republic*, 2020-2022
 - Editorial Board Service, cont.
 - *Journal of the Civil War Era*, 2016-2018
 - *Pacific Historical Review*, 2012-2015
 - *Ethnohistory*, 2009-2012
 - Prize Committees:
 - Robert M. Utley Award Com., Western History Association, 2022-2025
 - Ray Allen Billington Prize Committee, Organization of American Historians, 2017-2019.
 - David J. Weber-Clements Center Prize Committee, Western History Association, 2016-2018.
 - Bernath Lecture Prize Committee, Society for Historians of American Foreign Relations, 2015-2018.
 - Louis Knott Koontz Memorial Award committee, Pacific Coast Branch of the American Historical Association, 2012-15
 - CLAH Article Prize Committee (Chair), Conference on Latin American History, 2012
 - John Ewers Book Prize Committee, Western History Association, 2012
 - Sons of the Republic of Texas, Summerfield G. Roberts Book Award Committee, 2010-2012
 - Western History Association's Huntington-WHA Ridge Prize Committee, 2009-2011.
 - Conference Committees:
 - Conference Planning Committee, Society for Historians of the Early American Republic, 2021
 - Society for Historians of American Foreign Relations, Conference Planning Committee, 2012 and 2013
 - Organization of American Historians, Conference Planning Committee, 2012
 - Society for Historians of the Early Republic, Conference Planning Committee, 2012
 - Local Arrangements Committee, Western History Association Annual Conference, Denver, 2009
 - American Society for Ethnohistory, Conference Planning Com., 2005
 - Manuscript Reviewer for *American Historical Review*, *Ethnohistory*, *Western Historical Quarterly*, the *Journal of American History*, *Modern American History*, *Law and History Review*, *Economics and Human Biology*, *History: the Journal of the Historical Association*, *Journal of the Early Republic*; *Enterprise & Society*; *William & Mary Quarterly*; the *Southwestern Historical Quarterly*; Oxford University Press, Harvard University Press, Princeton University Press,

Manuscript Reviews, cont.

University of Pennsylvania Press, University of California Press, University of Arizona Press, Basic Books, Yale University Press, University of Colorado Press, University of Kansas Press, Cornell University Press, Palgrave & Macmillan; University of North Carolina Press, Duke University Press, University of Virginia Press, University of Tennessee Press, Texas A&M University Press; University of Nebraska Press, Blackwell Publishing, and Rourke Publishing.

- Other Professional Service:
 - Co-Chair, Taskforce on Conference Conduct and Sexual Harassment, 2019, Society for Historians of American Foreign Relations
 - Nominating Committee, Western History Association, 2019-2021
 - External Reviewer for UC Davis Undergraduate Program Review, 2017
 - Secretary and then Chair, Borderlands & Frontiers Studies Committee, Conference on Latin American History, 2011-2012
 - Grant/Fellowship reviews for: National Science Foundation; Comisión Nacional de Investigación científica y tecnológica (Chile)
 - Evaluations and nominations for the MacArthur Fellowship Program
- Member: American Historical Association; Organization of American Historians; Conference on Latin American History; Society for Historians of American Foreign Relations; Society for Historians of the Early American Republic; Western History Association.
- K-12 and Public Outreach:
 - Academic Advisor, Teaching American History Grant “American Democracy in Word and Deed,” Mt. Diablo School District, CA, 2009-2013.
 - Presenter at Teaching American History Grant workshops in Oakland, CA, Dec. 2009, May 2010, and Oct. 2010.
 - Lead Presenter at Teaching American History or Gilder-Lehrman workshops for primary-school teachers in:
 - Hartford, Delaware, June 2012
 - New Orleans / San Antonio, June 2012
 - Chicago, IL (June 2011)
 - Deer Valley, AZ (Feb., 2010)
 - Crescent City, CA (Jan., 2009 and April, 2010);
 - Eureka, CA (Jan., 2009);
 - Huntsville, Alabama (June 2008 and June 2009)
- Media:
 - Hour-long interview with the [History of California Podcast](#), Oct. 2020
 - On-air interview for BBC News World Service on gun law following the massacres in Gilroy, El Paso, and Dayton, August 10, 2019
 - On-air interview for extended program “[The American Gun Industry: A Billion Dollar Business](#),” Australian Broadcasting Corporation, March 18, 2018
 - On-air interview for BBC Newsday on Remington’s bankruptcy, March 27, 2018

Media, cont.

- On-air interview for “City Visions,” KALW San Francisco, on [youth protests against gun violence](#), March 26, 2018
- On-air interview for BBC Radio 5 on America’s gun business, Feb. 26, 2018
- On-air interview for “The Attitude,” Pacifica Network, on America’s gun business, February 20, 2018
- “[Gotham’s Gun Baron](#),” Spoken essay for BBC Radio Three program *The Essay*, January 2017
- On-screen consultant for German documentary on the U.S. presidency, “Die US-Präsidenten und der Krieg,” produced by Westdeutscher Rundfunk and aired nationally in Germany in November 2016.
- “[Guns, Capitalism, and Revolution in the Americas](#),” 2015 SHAFR keynote address filmed and broadcast on CSPAN’s American History TV, (first aired August 1, 2015).
- Interview with Deborah Lawrence and Jon Lawrence for [Contesting the Borderlands: Interviews on the Early Southwest](#) (University of Oklahoma Press, 2016), 182-200.
- Guest of NPR’s [Backstory, with the American History Guys](#), January 17, 2014
- Invited essay for the *New York Times*’ [Room for Debate](#) feature, July 2, 2013
- Guest on NPR’s “[On Point with Tom Ashbrook](#),” Nov. 7, 2012.
- Guest on PRI’s “[The World](#),” April 12, 2011
- On-screen consultant for “[The Mexican-American War](#),” Oct. 29, 2006, History Channel
- KERA “Think” radio interview on *War of a Thousand Deserts*, 2008.

EXHIBIT B

To the CURIOUS.

AN AIR GUN, made by a young man, a native of Rhode-Island, but now resident in this city, and which has been purchased by the subscriber, at a very considerable price, with a view eventually to make it the property of the American Museum but wishes to reimburse himself in the following manner, viz.

He will exhibit it to the examination of all persons desirous of viewing it, and of discharging a shot, for which they shall pay six pence.

This gun, when properly filled with air, will do execution twenty times, without renewing the charge, and for several times will send a ball thro' an inch board, at the distance of sixty yards, to be seen at the subscribers, No. 13, Maiden-lane, every day in the week, from ten to twelve o'clock in the forenoon, and from three to five in the afternoon, Tuesday and Friday afternoons excepted, at which time it may be seen at the Museum.

GARDINER BAKER,

February 11, 1792.

Keeper of the Museum.

EXHIBIT C

MUSEUM.

JOSEPH STEWARD, respectfully informs the public that he still continues to make additions to his collection in the State House in Hartford. Among which are several entertaining paintings. One large historic painting containing fourteen figures.

Among the natural curiosities is the skin of a large snake, from South America, 16 feet in length.

A curious savage Priest's cloak, freighted with wampum and bells after their manner.

An air-gun, shot with great force by air instead of powder.

The attention of gentlemen sailing to foreign parts, is requested, to collect curiosities, and every attention of this kind will be gratefully received and suitably rewarded.

Portrait Painting performed by said Steward as usual, at the Museum, and every attention paid to render it agreeable.

Hartford, April 11th, 1803.

EXHIBIT 2

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 15.2-915.5, 18.2-308.09, 18.2-308.2:1, 18.2-308.2:2, 18.2-308.2:3, 18.2-308.2:5, 18.2-308.7, and 19.2-386.28 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 18.2-287.4:1, 18.2-308.1:9, and 18.2-309.1, relating to purchase, sale, transfer, etc., of assault firearms and certain ammunition feeding devices prohibited; penalties.

[S 749]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-915.5, 18.2-308.09, 18.2-308.2:1, 18.2-308.2:2, 18.2-308.2:3, 18.2-308.2:5, 18.2-308.7, and 19.2-386.28 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 18.2-287.4:1, 18.2-308.1:9, and 18.2-309.1 as follows:

§ 15.2-915.5. Disposition of firearms acquired by localities.

A. No locality or agent of such locality may participate in any program in which individuals are given a thing of value provided by another individual or other entity in exchange for surrendering a firearm to the locality or agent of such locality unless (i) the governing body of the locality has enacted an ordinance, pursuant to § 15.2-1425, authorizing the participation of the locality or agent of such locality in such program or (ii) the program is a voluntary gun buy-back or give-back program for the surrendering of an assault firearm as defined in § 18.2-308.2:2.

B. Any ordinance enacted pursuant to this section shall require that any firearm received, except a firearm of the type defined in § 18.2-288 or 18.2-299 or a firearm the transfer for which is prohibited by federal law, shall be destroyed by the locality unless the person surrendering the firearm requests in writing that the firearm be offered for sale by public auction or sealed bids to a person licensed as a dealer pursuant to 18 U.S.C. § 921 et seq. Notice of the date, time, and place of any sale conducted pursuant to this subsection shall be given by advertisement in at least two newspapers published and having general circulation in the Commonwealth, at least one of which shall have general circulation in the locality in which the property to be sold is located. At least 30 days shall elapse between publication of the notice and the auction or the date on which sealed bids will be opened. Any firearm remaining in possession of the locality or agent of the locality after attempts to sell at public auction or by sealed bids shall be disposed of in a manner the locality deems proper, which may include destruction of the firearm or, subject to any registration requirements of federal law, sale of the firearm to a licensed dealer.

§ 18.2-287.4:1. Importation, sale, manufacture, etc., of assault firearms prohibited; penalty.

A. As used in this section:

"Assault firearm" means the same as that term is defined in § 18.2-308.2:2.

"Federal firearms licensee" means any person who is licensed pursuant to 18 U.S.C. § 923, as amended, as a federally licensed firearms dealer, importer, or manufacturer.

B. Any person who imports, sells, manufactures, purchases, or transfers an assault firearm is guilty of a Class 1 misdemeanor.

C. The provisions of this section shall not apply to (i) any government officer, agent, law-enforcement officer, employee, member of the Armed Forces of the United States, security personnel at a contracted defense facility as defined in § 18.2-121.3, or person authorized by the U.S. Nuclear Regulatory Commission, to the extent that such person is otherwise authorized to acquire or possess an assault firearm and does so while acting within the scope of his duties; (ii) the import of an assault firearm by any member of the Armed Forces of the United States, or his spouse, who possessed an assault firearm prior to being in the Commonwealth and is sent to the Commonwealth under lawful orders; (iii) the import, barter, manufacture, transfer, purchase, or sale of an assault firearm by a federal firearms licensee to another federal firearms licensee, persons authorized to purchase an assault weapon, any branch of the Armed Forces of the United States, senior military colleges in the Commonwealth organized under 10 U.S.C. § 2111a(f), or to a law-enforcement officer or agency for use by that agency or its employees; (iv) any member of a cadet corps who is recognized by a public institution of higher education while such member is in the performance of lawful military training or such member is participating in an official ceremonial event for the Commonwealth; (v) the sale of an assault firearm by a person who lawfully purchased and possessed such assault firearm prior to July 1, 2026, to a firearms dealer or to an individual outside of the Commonwealth who may lawfully possess such assault firearm; (vi) the temporary transfer of an assault firearm by a person who lawfully purchased and possessed such assault firearm prior to July 1, 2026, to a federal firearms licensee or gunsmith and the return of such assault firearm to its owner; (vii) the receipt of an assault firearm by inheritance, and possession of the inherited assault firearm if the decedent lawfully possessed such assault

firearm prior to his death and the person inheriting such assault firearm is not prohibited from possessing firearms by state or federal law; (viii) an assault firearm temporarily loaned by a firing range operated by a federal firearms licensee for lawful use solely for target shooting or firearms training within the physical premises of the firing range; (ix) the import of an assault firearm by a person who lawfully purchased and possessed such assault firearm prior to July 1, 2026; or (x) the transfer of an assault weapon as a gift to an immediate family member if the transferor lawfully purchased and possessed the assault firearm prior to July 1, 2026, and the immediate family member to whom the assault firearm is transferred is not prohibited from possessing firearms under state or federal law. For the purposes of this subdivision, "immediate family member" means a spouse, children, parents, grandparents, and siblings.

§ 18.2-308.09. Disqualifications for a concealed handgun permit.

The following persons shall be deemed disqualified from obtaining a permit:

1. An individual who is ineligible to possess a firearm pursuant to § 18.2-308.1:1, 18.2-308.1:2, 18.2-308.1:3, 18.2-308.1:6, 18.2-308.1:7, ~~or~~ 18.2-308.1:8, or 18.2-308.1:9 or the substantially similar law of any other state or of the United States.

2. An individual who was ineligible to possess a firearm pursuant to § 18.2-308.1:1 and who was discharged from the custody of the Commissioner pursuant to § 19.2-182.7 less than five years before the date of his application for a concealed handgun permit.

3. An individual who was ineligible to possess a firearm pursuant to § 18.2-308.1:2 and whose competency or capacity was restored pursuant to § 64.2-2012 less than five years before the date of his application for a concealed handgun permit.

4. An individual who was ineligible to possess a firearm under § 18.2-308.1:3 and who was released from commitment less than five years before the date of this application for a concealed handgun permit.

5. An individual who is subject to a restraining order, or to a protective order and prohibited by § 18.2-308.1:4 from purchasing, possessing, or transporting a firearm.

6. An individual who is prohibited by § 18.2-308.2 from possessing or transporting a firearm, except that a restoration order may be obtained in accordance with subsection C of that section.

7. An individual who has been convicted of two or more misdemeanors within the five-year period immediately preceding the application, if one of the misdemeanors was a Class 1 misdemeanor, but the judge shall have the discretion to deny a permit for two or more misdemeanors that are not Class 1. Traffic infractions and misdemeanors set forth in Title 46.2 shall not be considered for purposes of this disqualification.

8. An individual who is addicted to, or is an unlawful user or distributor of, marijuana, synthetic cannabinoids, or any controlled substance.

9. An individual who has been convicted of a violation of § 18.2-266 or a substantially similar local ordinance, or of public drunkenness, or of a substantially similar offense under the laws of any other state, the District of Columbia, the United States, or its territories within the three-year period immediately preceding the application.

10. An alien other than an alien lawfully admitted for permanent residence in the United States.

11. An individual who has been discharged from the armed forces of the United States under dishonorable conditions.

12. An individual who is a fugitive from justice.

13. An individual who the court finds, by a preponderance of the evidence, based on specific acts by the applicant, is likely to use a weapon unlawfully or negligently to endanger others. The sheriff, chief of police, or attorney for the Commonwealth may submit to the court a sworn, written statement indicating that, in the opinion of such sheriff, chief of police, or attorney for the Commonwealth, based upon a disqualifying conviction or upon the specific acts set forth in the statement, the applicant is likely to use a weapon unlawfully or negligently to endanger others. The statement of the sheriff, chief of police, or the attorney for the Commonwealth shall be based upon personal knowledge of such individual or of a deputy sheriff, police officer, or assistant attorney for the Commonwealth of the specific acts, or upon a written statement made under oath before a notary public of a competent person having personal knowledge of the specific acts.

14. An individual who has been convicted of any assault, assault and battery, sexual battery, discharging of a firearm in violation of § 18.2-280 or 18.2-286.1 or brandishing of a firearm in violation of § 18.2-282 within the three-year period immediately preceding the application.

15. An individual who has been convicted of stalking.

16. An individual whose previous convictions or adjudications of delinquency were based on an offense that would have been at the time of conviction a felony if committed by an adult under the laws of any state, the District of Columbia, the United States or its territories. For purposes of this disqualifier, only convictions occurring within 16 years following the later of the date of (i) the conviction or adjudication or (ii) release from any incarceration imposed upon such conviction or adjudication shall be deemed to be "previous convictions." Disqualification under this subdivision shall not apply to an individual with previous adjudications of delinquency who has completed a term of service of no less than two years in the Armed Forces of the United States and, if such person has been discharged from the Armed Forces of the United

States, received an honorable discharge.

17. An individual who has a felony charge pending or a charge pending for an offense listed in subdivision 14 or 15.

18. An individual who has received mental health treatment or substance abuse treatment in a residential setting within five years prior to the date of his application for a concealed handgun permit.

19. An individual not otherwise ineligible pursuant to this article, who, within the three-year period immediately preceding the application for the permit, was found guilty of any criminal offense set forth in Chapter 11 (§ 4.1-1100 et seq.) of Title 4.1, Article 1 (§ 18.2-247 et seq.), or former § 18.2-248.1:1 or of a criminal offense of illegal possession or distribution of marijuana, synthetic cannabinoids, or any controlled substance, under the laws of any state, the District of Columbia, or the United States or its territories.

20. An individual, not otherwise ineligible pursuant to this article, with respect to whom, within the three-year period immediately preceding the application, upon a charge of any criminal offense set forth in Chapter 11 (§ 4.1-1100 et seq.) of Title 4.1, Article 1 (§ 18.2-247 et seq.), or former § 18.2-248.1:1 or upon a charge of illegal possession or distribution of marijuana, synthetic cannabinoids, or any controlled substance under the laws of any state, the District of Columbia, or the United States or its territories, the trial court found that the facts of the case were sufficient for a finding of guilt and disposed of the case pursuant to § 18.2-251 or the substantially similar law of any other state, the District of Columbia, or the United States or its territories.

§ 18.2-308.1:9. Purchase, possession, or transportation of firearm following conviction for importation, sale, possession, etc., of assault firearm; penalty.

A. Any person who knowingly and intentionally purchases, possesses, or transports any firearm following a misdemeanor conviction for a violation of § 18.2-287.4:1 is guilty of a Class 1 misdemeanor.

B. Any person convicted of a violation of § 18.2-287.4:1 or this section shall be prohibited from purchasing, possessing, or transporting a firearm for three years following the date of such conviction at which point the person convicted of such offense shall no longer be prohibited from purchasing, possessing, or transporting a firearm pursuant to this section. Such person shall have his firearm rights restored, unless such person receives another disqualifying conviction, is subject to a protective order that would restrict his rights to carry a firearm, or is otherwise prohibited by law from purchasing, possessing, or transporting a firearm.

§ 18.2-308.2:1. Prohibiting the selling, etc., of firearms to certain persons; penalties.

Any person who sells, barter, gives, or furnishes, or has in his possession or under his control with the intent of selling, bartering, giving, or furnishing, any firearm to any person he knows is prohibited from possessing or transporting a firearm pursuant to § 18.2-308.1:1, 18.2-308.1:2, or 18.2-308.1:3, subsection B of § 18.2-308.1:4, § 18.2-308.1:6 or 18.2-308.2, subsection B of § 18.2-308.2:01, or § 18.2-308.7 is guilty of a Class 4 felony.

Any person who sells, barter, gives, or furnishes, or has in his possession or under his control with the intent of selling, bartering, giving, or furnishing, any firearm to any person he knows is prohibited from purchasing, possessing, or transporting a firearm pursuant to § 18.2-308.1:7 ~~or~~, 18.2-308.1:8, or 18.2-308.1:9 is guilty of a Class 1 misdemeanor.

However, this prohibition shall not be applicable when the person convicted of the felony or misdemeanor, adjudicated delinquent, or acquitted by reason of insanity has (i) been issued a permit pursuant to subsection C of § 18.2-308.2 or been granted relief pursuant to subsection B of § 18.2-308.1:1 or § 18.2-308.1:2 or 18.2-308.1:3; (ii) been pardoned or had his political disabilities removed in accordance with subsection B of § 18.2-308.2; or (iii) obtained a permit to ship, transport, possess, or receive firearms pursuant to the laws of the United States.

§ 18.2-308.2:2. Criminal history record information check required for the transfer of certain firearms.

A. Any person purchasing from a dealer a firearm as ~~herein~~ defined in this section shall consent in writing, on a form to be provided by the Department of State Police, to have the dealer obtain criminal history record information. Such form shall include only the written consent; the name, birth date, gender, race, citizenship, and social security number and/or any other identification number; the number of firearms by category intended to be sold, rented, traded, or transferred; and answers by the applicant to the following questions: (i) has the applicant been convicted of a felony offense or a misdemeanor offense listed in § 18.2-308.1:8 or 18.2-308.1:9 or found guilty or adjudicated delinquent as a juvenile 14 years of age or older at the time of the offense of a delinquent act that if committed by an adult would be a felony or a misdemeanor listed in § 18.2-308.1:8 or 18.2-308.1:9; (ii) is the applicant subject to a court order restraining the applicant from harassing, stalking, or threatening the applicant's child or intimate partner, or a child of such partner, or is the applicant subject to a protective order; (iii) has the applicant ever been acquitted by reason of insanity and prohibited from purchasing, possessing, or transporting a firearm pursuant to § 18.2-308.1:1 or any substantially similar law of any other jurisdiction, been adjudicated legally incompetent, mentally incapacitated, or adjudicated an incapacitated person and prohibited from purchasing a firearm pursuant to § 18.2-308.1:2 or any substantially similar law of any other jurisdiction, been

involuntarily admitted to an inpatient facility or involuntarily ordered to outpatient mental health treatment and prohibited from purchasing a firearm pursuant to § 18.2-308.1:3 or any substantially similar law of any other jurisdiction, or been the subject of a temporary detention order pursuant to § 37.2-809 and subsequently agreed to a voluntary admission pursuant to § 37.2-805; and (iv) is the applicant subject to an emergency substantial risk order or a substantial risk order entered pursuant to § 19.2-152.13 or 19.2-152.14 and prohibited from purchasing, possessing, or transporting a firearm pursuant to § 18.2-308.1:6 or any substantially similar law of any other jurisdiction.

B. 1. No dealer shall sell, rent, trade, or transfer from his inventory any such firearm to any other person who is a resident of Virginia until he has (i) obtained written consent and the other information on the consent form specified in subsection A, and provided the Department of State Police with the name, birth date, gender, race, citizenship, and social security and/or any other identification number and the number of firearms by category intended to be sold, rented, traded, or transferred and (ii) requested criminal history record information by a telephone call to or other communication authorized by the State Police and is authorized by subdivision 2 to complete the sale or other such transfer. To establish personal identification and residence in Virginia for purposes of this section, a dealer must require any prospective purchaser to present one photo-identification form issued by a governmental agency of the Commonwealth or by the United States Department of Defense or a special identification card without a photograph issued pursuant to § 46.2-345.2 that demonstrates that the prospective purchaser resides in Virginia. For the purposes of this section and establishment of residency for firearm purchase, residency of a member of the armed forces shall include both the state in which the member's permanent duty post is located and any nearby state in which the member resides and from which he commutes to the permanent duty post. A member of the armed forces whose photo identification issued by the Department of Defense does not have a Virginia address may establish his Virginia residency with such photo identification and either permanent orders assigning the purchaser to a duty post, including the Pentagon, in Virginia or the purchaser's Leave and Earnings Statement. When the identification presented to a dealer by the prospective purchaser is a driver's license or other photo identification issued by the Department of Motor Vehicles or a special identification card without a photograph issued pursuant to § 46.2-345.2, and such identification form or card contains a date of issue, the dealer shall not, except for a renewed driver's license or other photo identification issued by the Department of Motor Vehicles or a renewed special identification card without a photograph issued pursuant to § 46.2-345.2, sell or otherwise transfer a firearm to the prospective purchaser until 30 days after the date of issue of an original or duplicate driver's license or special identification card without a photograph unless the prospective purchaser also presents a copy of his Virginia Department of Motor Vehicles driver's record showing that the original date of issue of the driver's license was more than 30 days prior to the attempted purchase.

In addition, no dealer shall sell, rent, trade, or transfer from his inventory any assault firearm to any person who is not a citizen of the United States or who is not a person lawfully admitted for permanent residence.

Upon receipt of the request for a criminal history record information check, the State Police shall (a) review its criminal history record information to determine if the buyer or transferee is prohibited from possessing or transporting a firearm by state or federal law, (b) inform the dealer if its record indicates that the buyer or transferee is so prohibited, and (c) provide the dealer with a unique reference number for that inquiry.

2. The State Police shall provide its response to the requesting dealer during the dealer's request or by return call without delay. A dealer who fulfills the requirements of subdivision 1 and is told by the State Police that a response will not be available by the end of the dealer's fifth business day may immediately complete the sale or transfer and shall not be deemed in violation of this section with respect to such sale or transfer.

3. Except as required by subsection D of § 9.1-132, the State Police shall not maintain records longer than 30 days, except for multiple handgun transactions for which records shall be maintained for 12 months, from any dealer's request for a criminal history record information check pertaining to a buyer or transferee who is not found to be prohibited from possessing and transporting a firearm under state or federal law. However, the log on requests made may be maintained for a period of 12 months, and such log shall consist of the name of the purchaser, the dealer identification number, the unique approval number, and the transaction date.

4. On the last day of the week following the sale or transfer of any firearm, the dealer shall mail or deliver the written consent form required by subsection A to the Department of State Police. The State Police shall immediately initiate a search of all available criminal history record information to determine if the purchaser is prohibited from possessing or transporting a firearm under state or federal law. If the search discloses information indicating that the buyer or transferee is so prohibited from possessing or transporting a firearm, the State Police shall inform the chief law-enforcement officer in the jurisdiction where the sale or transfer occurred and the dealer without delay.

5. Notwithstanding any other provisions of this section, rifles and shotguns may be purchased by persons who are citizens of the United States or persons lawfully admitted for permanent residence but residents of

other states under the terms of subsections A and B upon furnishing the dealer with one photo-identification form issued by a governmental agency of the person's state of residence and one other form of identification determined to be acceptable by the Department of Criminal Justice Services.

6. For the purposes of this subsection, the phrase "dealer's fifth business day" does not include December 25.

C. No dealer shall sell, rent, trade, or transfer from his inventory any firearm, except when the transaction involves a rifle or a shotgun and can be accomplished pursuant to the provisions of subdivision B 5, to any person who is a dual resident of Virginia and another state pursuant to applicable federal law unless he has first obtained from the Department of State Police a report indicating that a search of all available criminal history record information has not disclosed that the person is prohibited from possessing or transporting a firearm under state or federal law.

To establish personal identification and dual resident eligibility for purposes of this subsection, a dealer shall require any prospective purchaser to present one photo-identification form issued by a governmental agency of the prospective purchaser's state of legal residence and other documentation of dual residence within the Commonwealth. The other documentation of dual residence in the Commonwealth may include (i) evidence of currently paid personal property tax or real estate tax or a current (a) lease, (b) utility or telephone bill, (c) voter registration card, (d) bank check, (e) passport, (f) automobile registration, or (g) hunting or fishing license; (ii) other current identification allowed as evidence of residency by 27 C.F.R. § 178.124 and ATF Ruling 2001-5; or (iii) other documentation of residence determined to be acceptable by the Department of Criminal Justice Services and that corroborates that the prospective purchaser currently resides in Virginia.

D. If any buyer or transferee is denied the right to purchase a firearm under this section, he may exercise his right of access to and review and correction of criminal history record information under § 9.1-132 or institute a civil action as provided in § 9.1-135, provided any such action is initiated within 30 days of such denial.

E. Any dealer who willfully and intentionally requests, obtains, or seeks to obtain criminal history record information under false pretenses, or who willfully and intentionally disseminates or seeks to disseminate criminal history record information except as authorized in this section, shall be is guilty of a Class 2 misdemeanor.

F. For purposes of this section:

"Actual buyer" means a person who executes the consent form required in subsection B or C, or other such firearm transaction records as may be required by federal law.

"Antique firearm" means:

1. Any firearm (including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system) manufactured in or before 1898;

2. Any replica of any firearm described in subdivision 1 of this definition if such replica (i) is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition or (ii) uses rimfire or conventional centerfire fixed ammunition that is no longer manufactured in the United States and that is not readily available in the ordinary channels of commercial trade;

3. Any muzzle-loading rifle, muzzle-loading shotgun, or muzzle-loading pistol that is designed to use black powder, or a black powder substitute, and that cannot use fixed ammunition. For purposes of this subdivision, the term "antique firearm" shall not include any weapon that incorporates a firearm frame or receiver, any firearm that is converted into a muzzle-loading weapon, or any muzzle-loading weapon that can be readily converted to fire fixed ammunition by replacing the barrel, bolt, breech-block, or any combination thereof; or

4. Any curio or relic as defined in this subsection.

"Assault firearm" means any:

1. A semi-automatic center-fire rifle or pistol which expels single or multiple projectiles by action of an explosion of a combustible material and is equipped at the time of the offense with a magazine which will hold more than 20 rounds of ammunition or designed by the manufacturer to accommodate a silencer or equipped with a folding stock with a fixed magazine capacity in excess of 15 rounds;

2. A semi-automatic center-fire rifle that has the ability to accept a detachable magazine, not including an attached tubular device designed to accept and capable of operating only with .22 caliber rimfire ammunition, and that has one or more of the following characteristics: (i) a folding, telescoping, or collapsible stock; (ii) a thumbhole stock or pistol grip that protrudes conspicuously beneath the action of the rifle; (iii) a second handgrip or a protruding grip that can be held by the non-trigger hand; (iv) a grenade launcher; or (v) a threaded barrel capable of accepting (a) a muzzle brake, (b) a muzzle compensator, (c) a sound suppressor, or (d) a flash suppressor;

3. A semi-automatic center-fire pistol that has two or more of the following characteristics: (i) a second handgrip or a protruding grip that can be held by the non-trigger hand; (ii) the capacity to accept a magazine that attaches to the pistol outside of the pistol grip; (iii) a shroud that is attached to, or partially or completely encircles, the barrel and that permits the shooter to hold the pistol with the non-trigger hand without being burned; (iv) a threaded barrel capable of accepting (a) a sound suppressor, (b) a flash

suppressor, (c) a barrel extender, or (d) a forward handgrip; or (v) a buffer tube, arm brace, or other part that protrudes horizontally behind the pistol grip and is designed or redesigned to allow or facilitate the firing of a firearm from the shoulder;

4. A semi-automatic shotgun that expels single or multiple projectiles by action of an explosion of a combustible material that has one of the following characteristics: (i) a folding, telescoping, or collapsible stock; (ii) a thumbhole stock or pistol grip that protrudes conspicuously beneath the action of the shotgun; (iii) the ability to accept a detachable magazine; (iv) a fixed magazine capacity in excess of 15 rounds; or (v) any characteristic of like kind as enumerated in clauses (i) through (iv);

5. A shotgun with a revolving cylinder;

6. A firearm that has the capacity to accept a belt ammunition feeding device; or

7. A firearm that has been modified to be operable as an assault firearm as described in subdivisions 1 through 6.

An "assault firearm" does not include any firearm that is an antique firearm, has been rendered permanently inoperable, or is manually operated by bolt, pump, lever, or slide action.

"Curios or relics" means firearms that are of special interest to collectors by reason of some quality other than is associated with firearms intended for sporting use or as offensive or defensive weapons. To be recognized as curios or relics, firearms must fall within one of the following categories:

1. Firearms that were manufactured at least 50 years prior to the current date, which use rimfire or conventional centerfire fixed ammunition that is no longer manufactured in the United States and that is not readily available in the ordinary channels of commercial trade, but not including replicas thereof;

2. Firearms that are certified by the curator of a municipal, state, or federal museum that exhibits firearms to be curios or relics of museum interest; and

3. Any other firearms that derive a substantial part of their monetary value from the fact that they are novel, rare, bizarre, or because of their association with some historical figure, period, or event. Proof of qualification of a particular firearm under this category may be established by evidence of present value and evidence that like firearms are not available except as collectors' items, or that the value of like firearms available in ordinary commercial channels is substantially less.

"Dealer" means any person licensed as a dealer pursuant to 18 U.S.C. § 921 et seq.

"Firearm" means any handgun, shotgun, or rifle that will or is designed to or may readily be converted to expel single or multiple projectiles by action of an explosion of a combustible material.

"Handgun" means any pistol or revolver or other firearm originally designed, made and intended to fire single or multiple projectiles by means of an explosion of a combustible material from one or more barrels when held in one hand.

"Lawfully admitted for permanent residence" means the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed.

G. The Department of Criminal Justice Services shall promulgate regulations to ensure the identity, confidentiality, and security of all records and data provided by the Department of State Police pursuant to this section.

H. The provisions of this section shall not apply to (i) transactions between persons who are licensed as firearms importers or collectors, manufacturers or dealers pursuant to 18 U.S.C. § 921 et seq.; (ii) purchases by or sales to any law-enforcement officer or agent of the United States, the Commonwealth or any local government, or any campus police officer appointed under Article 3 (§ 23.1-809 et seq.) of Chapter 8 of Title 23.1; or (iii) antique firearms or curios or relics.

I. The provisions of this section shall not apply to restrict purchase, trade, or transfer of firearms by a resident of Virginia when the resident of Virginia makes such purchase, trade, or transfer in another state, in which case the laws and regulations of that state and the United States governing the purchase, trade, or transfer of firearms shall apply. A National Instant Criminal Background Check System (NICS) check shall be performed prior to such purchase, trade, or transfer of firearms.

J. All licensed firearms dealers shall collect a fee of \$2 for every transaction for which a criminal history record information check is required pursuant to this section, except that a fee of \$5 shall be collected for every transaction involving an out-of-state resident. Such fee shall be transmitted to the Department of State Police by the last day of the month following the sale for deposit in a special fund for use by the State Police to offset the cost of conducting criminal history record information checks under the provisions of this section.

K. Any person willfully and intentionally making a materially false statement on the consent form required in subsection B or C or on such firearm transaction records as may be required by federal law shall be guilty of a Class 5 felony.

L. Except as provided in § 18.2-308.2:1, any dealer who willfully and intentionally sells, rents, trades, or transfers a firearm in violation of this section shall be guilty of a Class 6 felony.

L1. Any person who attempts to solicit, persuade, encourage, or entice any dealer to transfer or otherwise convey a firearm other than to the actual buyer, as well as any other person who willfully and intentionally

aids or abets such person, ~~shall be~~ *is* guilty of a Class 6 felony. This subsection shall not apply to a federal law-enforcement officer or a law-enforcement officer as defined in § 9.1-101, in the performance of his official duties, or other person under his direct supervision.

M. Any person who purchases a firearm with the intent to (i) resell or otherwise provide such firearm to any person who he knows or has reason to believe is ineligible to purchase or otherwise receive from a dealer a firearm for whatever reason or (ii) transport such firearm out of the Commonwealth to be resold or otherwise provided to another person who the transferor knows is ineligible to purchase or otherwise receive a firearm; ~~shall be~~ *is* guilty of a Class 4 felony and sentenced to a mandatory minimum term of imprisonment of one year. However, if the violation of this subsection involves such a transfer of more than one firearm, the person shall be sentenced to a mandatory minimum term of imprisonment of five years. The prohibitions of this subsection shall not apply to the purchase of a firearm by a person for the lawful use, possession, or transport thereof, pursuant to § 18.2-308.7, by his child, grandchild, or individual for whom he is the legal guardian if such child, grandchild, or individual is ineligible, solely because of his age, to purchase a firearm.

N. Any person who is ineligible to purchase or otherwise receive or possess a firearm in the Commonwealth who solicits, employs, or assists any person in violating subsection M ~~shall be~~ *is* guilty of a Class 4 felony and shall be sentenced to a mandatory minimum term of imprisonment of five years.

O. Any mandatory minimum sentence imposed under this section shall be served consecutively with any other sentence.

P. All driver's licenses issued on or after July 1, 1994, shall carry a letter designation indicating whether the driver's license is an original, duplicate, or renewed driver's license.

Q. Prior to selling, renting, trading, or transferring any firearm owned by the dealer but not in his inventory to any other person, a dealer may require such other person to consent to have the dealer obtain criminal history record information to determine if such other person is prohibited from possessing or transporting a firearm by state or federal law. The Department of State Police shall establish policies and procedures in accordance with 28 C.F.R. § 25.6 to permit such determinations to be made by the Department of State Police, and the processes established for making such determinations shall conform to the provisions of this section.

R. Except as provided in subdivisions 1 and 2, it ~~shall be~~ *is* unlawful for any person who is not a licensed firearms dealer to purchase more than one handgun within any 30-day period. For the purposes of this subsection, "purchase" does not include the exchange or replacement of a handgun by a seller for a handgun purchased from such seller by the same person seeking the exchange or replacement within the 30-day period immediately preceding the date of exchange or replacement. A violation of this subsection is punishable as a Class 1 misdemeanor.

1. Purchases in excess of one handgun within a 30-day period may be made upon completion of an enhanced background check, as described in this subsection, by special application to the Department of State Police listing the number and type of handguns to be purchased and transferred for lawful business or personal use, in a collector series, for collections, as a bulk purchase from estate sales, and for similar purposes. Such applications shall be signed under oath by the applicant on forms provided by the Department of State Police, shall state the purpose for the purchase above the limit, and shall require satisfactory proof of residency and identity. Such application shall be in addition to the firearms sales report required by the federal Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). The Superintendent of State Police shall promulgate regulations, pursuant to the Administrative Process Act (§ 2.2-4000 et seq.), for the implementation of an application process for purchases of handguns above the limit.

Upon being satisfied that these requirements have been met, the Department of State Police shall immediately issue to the applicant a nontransferable certificate, which shall be valid for seven days from the date of issue. The certificate shall be surrendered to the dealer by the prospective purchaser prior to the consummation of such sale and shall be kept on file at the dealer's place of business for inspection as provided in § 54.1-4201 for a period of not less than two years. Upon request of any local law-enforcement agency, and pursuant to its regulations, the Department of State Police may certify such local law-enforcement agency to serve as its agent to receive applications and, upon authorization by the Department of State Police, issue certificates immediately pursuant to this subdivision. Applications and certificates issued under this subdivision shall be maintained as records as provided in subdivision B 3. The Department of State Police shall make available to local law-enforcement agencies all records concerning certificates issued pursuant to this subdivision and all records provided for in subdivision B 3.

2. The provisions of this subsection shall not apply to:

a. A law-enforcement agency;

b. An agency duly authorized to perform law-enforcement duties;

c. A state or local correctional facility;

d. A private security company licensed to do business within the Commonwealth;

e. The purchase of antique firearms;

f. A person whose handgun is stolen or irretrievably lost who deems it essential that such handgun be replaced immediately. Such person may purchase another handgun, even if the person has previously

purchased a handgun within a 30-day period, provided that (i) the person provides the firearms dealer with a copy of the official police report or a summary thereof, on forms provided by the Department of State Police, from the law-enforcement agency that took the report of the lost or stolen handgun; (ii) the official police report or summary thereof contains the name and address of the handgun owner, a description of the handgun, the location of the loss or theft, the date of the loss or theft, and the date the loss or theft was reported to the law-enforcement agency; and (iii) the date of the loss or theft as reflected on the official police report or summary thereof occurred within 30 days of the person's attempt to replace the handgun. The firearms dealer shall attach a copy of the official police report or summary thereof to the original copy of the Virginia firearms transaction report completed for the transaction and retain it for the period prescribed by the Department of State Police;

g. A person who trades in a handgun at the same time he makes a handgun purchase and as a part of the same transaction, provided that no more than one transaction of this nature is completed per day;

h. A person who holds a valid Virginia permit to carry a concealed handgun;

i. A person who purchases a handgun in a private sale. For purposes of this subdivision, "private sale" means a purchase from a person who makes occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection of curios or relics or who sells all or part of such collection of curios and relics; or

j. A law-enforcement officer. For purposes of this subdivision, "law-enforcement officer" means any employee of a police department or sheriff's office that is part of or administered by the Commonwealth or any political subdivision thereof and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic, or highway laws of the Commonwealth.

§ 18.2-308.2:3. Criminal background check required for employees of a gun dealer to transfer firearms; exemptions; penalties.

A. No person, corporation, or proprietorship licensed as a firearms dealer pursuant to 18 U.S.C. § 921 et seq. shall employ any person to act as a seller, whether full-time or part-time, permanent, temporary, paid or unpaid, for the transfer of firearms under § 18.2-308.2:2, if such employee would be prohibited from possessing a firearm under § 18.2-308.1:1, 18.2-308.1:2, or 18.2-308.1:3, subsection B of § 18.2-308.1:4, or § 18.2-308.1:6, 18.2-308.1:7, 18.2-308.1:8, 18.2-308.1:9, 18.2-308.2, or 18.2-308.2:01, or is an illegal alien, or is prohibited from purchasing or transporting a firearm pursuant to subsection A of § 18.2-308.1:4 or § 18.2-308.1:5.

B. Prior to permitting an applicant to begin employment, the dealer shall obtain a written statement or affirmation from the applicant that he is not disqualified from possessing a firearm and shall submit the applicant's fingerprints and personal descriptive information to the Central Criminal Records Exchange to be forwarded to the Federal Bureau of Investigation (FBI) for the purpose of obtaining national criminal history record information regarding the applicant.

C. Prior to August 1, 2000, the dealer shall obtain written statements or affirmations from persons employed before July 1, 2000, to act as a seller under § 18.2-308.2:2 that they are not disqualified from possessing a firearm. Within five working days of the employee's next birthday, after August 1, 2000, the dealer shall submit the employee's fingerprints and personal descriptive information to the Central Criminal Records Exchange to be forwarded to the Federal Bureau of Investigation (FBI) for the purpose of obtaining national criminal history record information regarding the request.

C1. In lieu of submitting fingerprints pursuant to this section, any dealer holding a valid federal firearms license (FFL) issued by the Bureau of Alcohol, Tobacco and Firearms (ATF) may submit a sworn and notarized affidavit to the Department of State Police on a form provided by the Department, stating that the dealer has been subjected to a record check prior to the issuance and that the FFL was issued by the ATF. The affidavit may also contain the names of any employees that have been subjected to a record check and approved by the ATF. This exemption shall apply regardless of whether the FFL was issued in the name of the dealer or in the name of the business. The affidavit shall contain the valid FFL number, state the name of each person requesting the exemption, together with each person's identifying information, including their social security number and the following statement: "I hereby swear, under the penalty of perjury, that as a condition of obtaining a federal firearms license, each person requesting an exemption in this affidavit has been subjected to a fingerprint identification check by the Bureau of Alcohol, Tobacco and Firearms and the Bureau of Alcohol, Tobacco and Firearms subsequently determined that each person satisfied the requirements of 18 U.S.C. § 921 et seq. I understand that any person convicted of making a false statement in this affidavit is guilty of a Class 5 felony and that in addition to any other penalties imposed by law, a conviction under this section shall result in the forfeiture of my federal firearms license."

D. The Department of State Police, upon receipt of an individual's record or notification that no record exists, shall submit an eligibility report to the requesting dealer within 30 days of the applicant beginning his duties for new employees or within 30 days of the applicant's birthday for a person employed prior to July 1, 2000.

E. If any applicant is denied employment because of information appearing on the criminal history record and the applicant disputes the information upon which the denial was based, the Central Criminal Records

Exchange shall, upon written request, furnish to the applicant the procedures for obtaining a copy of the criminal history record from the Federal Bureau of Investigation. The information provided to the dealer shall not be disseminated except as provided in this section.

F. The applicant shall bear the cost of obtaining the criminal history record unless the dealer, at his option, decides to pay such cost.

G. Upon receipt of the request for a criminal history record information check, the State Police shall establish a unique number for that firearm seller. Beginning September 1, 2001, the firearm seller's signature, firearm seller's number and the dealer's identification number shall be on all firearm transaction forms. The State Police shall void the firearm seller's number when a disqualifying record is discovered. The State Police may suspend a firearm seller's identification number upon the arrest of the firearm seller for a potentially disqualifying crime.

H. This section shall not restrict the transfer of a firearm at any place other than at a dealership or at any event required to be registered as a gun show.

I. Any person who willfully and intentionally requests, obtains, or seeks to obtain criminal history record information under false pretenses, or who willfully and intentionally disseminates or seeks to disseminate criminal history record information except as authorized by this section and § 18.2-308.2:2, ~~shall be~~ *is* guilty of a Class 2 misdemeanor.

J. Any person willfully and intentionally making a materially false statement on the personal descriptive information required in this section ~~shall be~~ *is* guilty of a Class 5 felony. Any person who offers for transfer any firearm in violation of this section ~~shall be~~ *is* guilty of a Class 1 misdemeanor. Any dealer who willfully and knowingly employs or permits a person to act as a firearm seller in violation of this section ~~shall be~~ *is* guilty of a Class 1 misdemeanor.

K. There is no civil liability for any seller for the actions of any purchaser or subsequent transferee of a firearm lawfully transferred pursuant to this section.

L. The provisions of this section requiring a seller's background check shall not apply to a licensed dealer.

M. Any person who willfully and intentionally makes a false statement in the affidavit as set out in subdivision C 1 ~~shall be~~ *is* guilty of a Class 5 felony.

N. For purposes of this section:

"Dealer" means any person, corporation or proprietorship licensed as a dealer pursuant to 18 U.S.C. § 921 et seq.

"Firearm" means any handgun, shotgun, or rifle that will or is designed to or may readily be converted to expel single or multiple projectiles by action of an explosion of a combustible material.

"Place of business" means any place or premises where a dealer may lawfully transfer firearms.

"Seller" means for the purpose of any single sale of a firearm any person who is a dealer or an agent of a dealer, who may lawfully transfer firearms and who actually performs the criminal background check in accordance with the provisions of § 18.2-308.2:2.

"Transfer" means any act performed with intent to sell, rent, barter, or trade or otherwise transfer ownership or permanent possession of a firearm at the place of business of a dealer.

§ 18.2-308.2:5. Criminal history record information check required to sell firearm; penalties.

A. No person shall sell a firearm for money, goods, services or anything else of value unless he has obtained verification from a licensed dealer in firearms that information on the prospective purchaser has been submitted for a criminal history record information check as set out in § 18.2-308.2:2 and that a determination has been received from the Department of State Police that the prospective purchaser is not prohibited under state or federal law from possessing a firearm or such sale is specifically exempted by state or federal law. The Department of State Police shall provide a means by which sellers may obtain from designated licensed dealers the approval or denial of firearm transfer requests, based on criminal history record information checks. The processes established shall conform to the provisions of § 18.2-308.2:2, and the definitions and provisions of § 18.2-308.2:2 regarding criminal history record information checks shall apply to this section mutatis mutandis. The designated dealer shall collect and disseminate the fees prescribed in § 18.2-308.2:2 as required by that section. The dealer may charge and retain an additional fee not to exceed \$15 for obtaining a criminal history record information check on behalf of a seller.

B. Notwithstanding the provisions of subsection A and unless otherwise prohibited by *subsection E* or state or federal law, a person may sell a firearm to another person if:

1. The sale of a firearm is to an authorized representative of the Commonwealth or any subdivision thereof as part of an authorized voluntary gun buy-back or give-back program;

2. The sale occurs at a firearms show, as defined in § 54.1-4200, and the seller has received a determination from the Department of State Police that the purchaser is not prohibited under state or federal law from possessing a firearm in accordance with § 54.1-4201.2; or

3. The sale of a firearm is conducted pursuant to § 59.1-148.3, with the exception of a sale conducted pursuant to subsection C of § 59.1-148.3.

C. Any person who willfully and intentionally sells a firearm to another person without obtaining verification in accordance with this section is guilty of a Class 1 misdemeanor.

D. Any person who willfully and intentionally purchases a firearm from another person without obtaining verification in accordance with this section is guilty of a Class 1 misdemeanor.

E. No person shall sell an assault firearm as defined in § 18.2-308.2:2 for money, goods, services, or anything else of value.

Any person who willfully and intentionally (i) sells an assault firearm as defined in § 18.2-308.2:2 to another person or (ii) purchases an assault firearm as defined in § 18.2-308.2:2 from another person is guilty of a Class 1 misdemeanor.

§ 18.2-308.7. Possession or transportation of certain firearms by persons under the age of 18; penalty.

It shall be unlawful for any person under 18 years of age to knowingly and intentionally possess or transport a handgun or assault firearm as defined in § 18.2-308.2:2 anywhere in the Commonwealth. For the purposes of this section, "handgun" means any pistol or revolver or other firearm originally designed, made and intended to fire single or multiple projectiles by means of an explosion of a combustible material from one or more barrels when held in one hand and "assault firearm" means any (i) semi-automatic centerfire rifle or pistol which expels single or multiple projectiles by action of an explosion of a combustible material and is equipped at the time of the offense with a magazine which will hold more than 20 rounds of ammunition or designed by the manufacturer to accommodate a silencer or equipped with a folding stock or (ii) shotgun with a magazine which will hold more than seven rounds of the longest ammunition for which it is chambered. A violation of this section shall be is a Class 1 misdemeanor.

This section shall not apply to:

1. Any person (i) while in his home or on his property; (ii) while in the home or on the property of his parent, grandparent, or legal guardian; or (iii) while on the property of another who has provided prior permission, and with the prior permission of his parent or legal guardian if the person has the landowner's written permission on his person while on such property;

2. Any person who, while accompanied by an adult, is at, or going to and from, a lawful shooting range or firearms educational class, provided that the weapons are unloaded while being transported;

3. Any person actually engaged in lawful hunting or going to and from a hunting area or preserve, provided that the weapons are unloaded while being transported; and

4. Any person while carrying out his duties in the Armed Forces of the United States or the National Guard of this Commonwealth or any other state.

§ 18.2-309.1. Sale, transfer, etc., of certain firearms magazines prohibited; penalty.

A. As used in this section:

"Federal firearms licensee" means the same as that term is defined in § 18.2-287.4:1.

"Large capacity ammunition feeding device" means 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 but does not include an attached tubular device designed to accept and capable of operating only with .22 caliber rimfire ammunition.

B. Any person who imports, sells, barter, transfers, or purchases a large capacity ammunition feeding device is guilty of a Class 1 misdemeanor.

C. The provisions of this section shall not apply to the (i) manufacture by, transfer to, or possession by the Commonwealth, or a department, agency, or political subdivision of the Commonwealth, of a large capacity ammunition feeding device; (ii) transfer to or possession by a law-enforcement officer of a large capacity ammunition feeding device for purposes of law enforcement; (iii) possession of a large capacity ammunition feeding device by an individual who is retired from service with a law-enforcement agency and is not otherwise prohibited from receiving ammunition transferred to the individual by the law-enforcement agency upon his retirement; (iv) import of a large capacity ammunition feeding device by a person who lawfully purchased and possessed such large capacity ammunition feeding device prior to July 1, 2026; (v) possession of a large capacity ammunition feeding device that has been permanently modified such that it cannot accept more than 15 rounds of ammunition; (vi) the sale, barter, or transfer of a large capacity ammunition feeding device by a person who lawfully purchased and possessed such device prior to July 1, 2026, to a federal firearms licensee or any recipient outside of the Commonwealth who may lawfully possess such large capacity ammunition feeding device; or (vii) the import, sale, barter, transfer, purchase, or possession of a large capacity ammunition feeding device by a federal firearms licensee for the purpose of sale or transfer to any branch of the Armed Forces of the United States, to senior military colleges in the Commonwealth organized under 10 U.S.C. § 2111a(f), to a law-enforcement agency or officer, to another federal firearms licensee, or to a recipient outside the Commonwealth who may lawfully possess such large capacity ammunition feeding device.

§ 19.2-386.28. Forfeiture of weapons, etc., that are concealed, possessed, transported, or carried in violation of law.

If any firearm, stun weapon as defined by § 18.2-308.1, weapon, magazine, auto sear, or trigger activator is concealed, possessed, transported, or carried in violation of § 18.2-283.1, 18.2-287.01, 18.2-287.4, 18.2-287.4:1, 18.2-308.1:2, 18.2-308.1:3, 18.2-308.1:4, 18.2-308.1:8, 18.2-308.1:9, 18.2-308.2,

615 18.2-308.2:01, 18.2-308.2:1, 18.2-308.4, 18.2-308.5, 18.2-308.5:1, 18.2-308.7, ~~or~~ 18.2-308.8, *or* 18.2-309.1,
616 it shall be forfeited to the Commonwealth and disposed of as provided in § 19.2-386.29.

617 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
618 **commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary**
619 **appropriation cannot be determined for periods of imprisonment in state adult correctional facilities;**
620 **therefore, Chapter 725 of the Acts of Assembly of 2025 requires the Virginia Criminal Sentencing**
621 **Commission to assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4 of the Code of**
622 **Virginia, the estimated amount of the necessary appropriation cannot be determined for periods of**
623 **commitment to the custody of the Department of Juvenile Justice.**