VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF GOOCHLAND

VALERIE TROJAN

and

BROTHERS N ARMS, INC.

and

VIRGINIA CITIZENS DEFENSE LEAGUE

and

GUN OWNERS OF AMERICA, INC.

and

GUN OWNERS FOUNDATION

Plaintiffs,

v. **Case No.**

COLONEL GARY T. SETTLE
(In his Official Capacity as
Superintendent of the Virginia State Police)
7700 Midlothian Turnpike
North Chesterfield, Virginia 23235

Defendant.

COMPLAINT FOR DECLARATORY RELIEF,
APPLICATION FOR TEMPORARY AND PERMANENT
INJUNCTIVE RELIEF, AND PETITION FOR WRIT OF MANDAMUS

COME NOW Plaintiffs, by counsel, and move this Court for: (1) declaratory relief in the form of a finding that Va. Code § 18.2-308.2:2(R) (effective July 1, 2020) is unconstitutional under Article I, Section 13 of the Constitution of Virginia; (2) issuance of a temporary injunction

enjoining the enforcement of Va. Code § 18.2-308.2:2(R) until such time as this case is fully adjudicated; (3) issuance of a permanent injunction which enjoins the administration, enforcement, and imposition of the requirements of Va. Code § 18.2-308.2:2(R); (4) a writ of mandamus to enjoin enforcement of Va. Code § 18.2-308.2:2(R) as well as notifying the public of the injunction; and (5) such other and further relief as the Court may deem appropriate, and in support thereof state as follows.

BACKGROUND AND PRELIMINARY STATEMENT OF CASE

Enactment of § 18.2-308.2:2(R)

1. On April 10, 2020, Governor Northam signed into law Senate Bill 69/ House Bill 812, which will take effect on July 1, 2020, entitled "An Act to amend and reenact § 18.2-308.2:2 of the Code of Virginia, relating to purchase of handguns; limitation on handgun purchases; penalty" ("Act"). The Act in final form was passed by the Senate on January 16, 2020 (21Y-19N) with the House voting to accept this version in its Conference Report that was agreed to on March 5, 2020 (52Y-47N). A copy of the Act as passed is attached as Exhibit A.

2. The Act amended existing Va. Code § 18.2-308.2:2 by adding a new subsection (R), which unconstitutionally rations the direct exercise of an enumerated right under the Constitution of Virginia, making it unlawful for a person "to purchase more than one handgun within any 30-day period." Violation of this subsection is a Class 1 misdemeanor.

3. The Act provides for two types of exemptions. Paragraphs 2.a through 2.j provide categorical exemptions to the one-handgun-a-month limit for: law enforcement (¶ 2.a, ¶ 2.b, ¶ 2.j); correctional facilities (¶ 2.c); private security companies (¶ 2.d); antique firearms (¶ 2.e); replacement of a handgun that is "stolen or irretrievably lost" (¶ 2.f); the trading of one handgun

for another (¶ 2.g); a person who holds a concealed handgun permit (¶ 2.h); and private sales (¶ 2.i).

4. Paragraph 1 provides a different kind of exemption. Any person not eligible for an exemption under paragraph 2 may request advance permission from the government to purchase more than one handgun in a 30-day period by submitting a "special application" to the Virginia State Police. That application must be "signed under oath," provide "satisfactory proof of residency and identity," "state the purpose for the purchase above the limit," and list "the number and type of handguns to be purchased."[1] The Virginia Department of State Police ("VSP"), in turn, must conduct what is termed an "enhanced background check" – which apparently consists of a background check, verifying a person's residency and identity, and verifying that the other information has been provided. Once completed, VSP "shall immediately issue" a certificate, "valid for seven days," which the purchaser must then surrender to the dealer at the time of purchase.

5. Governor Northam's signing statement for the Act states that the Act has two purposes: "to help curtail stockpiling of firearms and trafficking."[2]

Prior "One-Handgun-A-Month" Law in Virginia

6. This is not the first time that Virginia has experimented with a one-handgun-a-month statute. In 1992, then Governor Douglas Wilder (in office 1990-1994) received an "Interim Report of the Governor's Commission on Violent Crime" (Dec. 1, 1992), which included a recommendation for legislation limiting "to one the number of handguns an individual

[1] The statute provides no standards as to how VSP is to analyze this information, such as how many handguns are too many, or what "purposes" are "legitimate" for a person seeking to purchase more than one handgun within 30 days.

[2] *See* Governor's Signing Statement, *available at* https://www.governor.virginia.gov/newsroom/all-releases/2020/april/headline-856016-en.html (last visited May 20, 2020).

may purchase in any 30-day period, with certain legitimate exceptions." Delegate S. Vance Wilkins, Jr. then sought an Opinion of the Attorney General of Virginia on the constitutionality of such a law and, on January 13, 1993, then Attorney General Mary Sue Terry provided her opinion[3] that, since "the Second Amendment confers only a collective right to bear arms ... legislation allowing a person to purchase no more than one handgun in a thirty-day period would not violate either the Second Amendment or Article I, § 13."

7. At the time of the previous bill's consideration, it was widely reported by the media that 40 percent of the guns used in crime in New York City had been purchased from dealers in Virginia. *See, e.g.,* G. Aisch and J. Keller, "How Gun Traffickers Get Around State Gun Laws," *New York Times* (Nov. 13, 2015) ("In New York and New Jersey, which have some of the strictest laws in the country, more than two-thirds of guns tied to criminal activity were traced to out-of-state purchases in 2014. Many were brought in via the so-called Iron Pipeline, made up of Interstate 95 and its tributary highways, from Southern states with weaker gun laws, like Virginia, Georgia and Florida.").

8. Governor Wilder reportedly sent every legislator a copy of a recent issue of the *Batman* comic book, which apparently had been written to assist the gun control cause[4] in an effort to urge passage of legislation to solve a firearms problem that had been depicted to exist in the fictional Gotham City.[5]

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[3] *See* Opinion of Va. Atty. Gen. (Jan. 13, 1993), 1993 Report of the Attorney General at 17.

[4] *See* G.L. Carter, Guns in American Society, Vol. II (ABL-CIO, LLC 2012), p. 660; *see also* D.P. Baker, "Wilder Signs Gun Control Bill," *Washington Post* (Mar. 24, 1993).

[5] *See* D. Wilder, "The NRA Won't Stop Virginia," *Daily Press* (Jan. 21, 1993).

9. In 1993, the General Assembly and the Governor enacted the prohibition on purchasing more than one handgun in a 30-day period, codified at Virginia Code § 18.2-308.2:2(Q). The law went into effect on July 1, 1993.

10. Pursuant to the 1993 statute, VSP created a multiple sale application form (SP-207), a "Dealer Procedures Manual" and promulgated regulations implementing the statute, at 19VAC30-100-20, *et seq*.

11. The prohibition was amended over the years, particularly by adding exceptions (such as to exempt purchasers with concealed handgun permits), and was repealed completely in 2012 by HB 940, introduced by Delegates Lingamfelter, Gilbert, and Marshall. Governor Bob McDonnell signed the bill repealing the statute on February 28, 2012. This prior "one-handgun-a-month" statute was never subjected to a facial or as-applied challenge in state or federal court while it was in effect.

12. Interestingly enough, Virginia also experimented with a different type of "one-gun" law more than two centuries prior to the 1993 prohibition. Designed to limit the number of firearms owned by a then-disfavored category of Virginians, the Commonwealth's 1748 slave codes provided that "[e]very free negro or mulatto, being a housekeeper may be permitted to keep **one gun**, powder and shot." H.S. Geyer, A Digest of the Laws of Missouri Territory (1818) at 374 (emphasis added).

One-Gun-A-Month Laws in Other Jurisdictions

13. During the 1990s, attempts to place quantitative limits on the right to keep and bear arms were all the rage. In 1994, the Brady Campaign had introduced the "Gun Violence Prevention Act of 1994" (S.1878, 103rd Cong.), which would have required any private person with more than 20 guns or 1,000 rounds of ammunition to apply for a "federal arsenal license"

which would have required their submission to up to three warrantless police inspections per year of their "arsenal."[6] The bill did not pass.

14. The nation's first one-handgun-a-month law was enacted by South Carolina in 1975, and repealed in 2004 (H.3442; S.C. Code § 23-31-140). It does not appear ever to have been challenged. A few other states have similar provisions. In 1996, Maryland enacted Md. Code Ann. Pub. Safety § 5-128(b) ("A person may not purchase more than one regulated firearm in a 30-day period"), which does not appear ever to have been challenged. In 1999, California enacted Cal. Penal Code §§ 27535, 27540(f), and 26835(f). A challenge was brought in *Doe v. Becerra*, 20 Cal. App. 5th 330 (2018), which interpreted the curio and relic exemption language, but the statute does not appear ever to have been challenged substantively. Finally, in 2010, New Jersey enacted N.J. Stat. Ann. § 2C:58-2a(7) ("A dealer shall not knowingly deliver more than one handgun to any person within any 30-day period...."). The statute was challenged in *Ass'n NJ Rifle & Pistol Clubs v. Governor of NJ*, 707 F.3d 238 (3d Cir. 2013), but *not* based on any constitutional provision pertaining to the right to keep and bear arms (nor any other colorable legal theory).

15. Various cities have also experimented unsuccessfully with one-gun-a-month ordinances. In July of 1993, Charleston, West Virginia enacted an ordinance (§ 6-106.2.5(a)) that was soon nullified by the state's preemption statute. *See* Carter at 661. Likewise, a Philadelphia, PA ordinance creating a one-gun-a-month restriction was soon overturned by an intermediate Pennsylvania court in *Clarke v. House of Representatives*, 957 A.2d 361 (Pa. Commw. 2008) (affirmed by 602 Pa. 222 (Pa. 2008)), based on Pennsylvania's clear preemption statute.

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[6] *See* "Brady Bill II", *available at* https://www.firearmsandliberty.com/brady2.html (last accessed May 20, 2020).

16. The only known constitutional challenge to a one-gun-a-month law resulted in a District of Columbia prohibition being enjoined. In that case, the U.S. District Court for the District of Columbia first upheld, but then the U.S. Court of Appeals for the District of Columbia Circuit struck down, the District of Columbia's one-handgun-a-month restriction, in part on constitutional grounds.

17. In the aftermath of the District's defeat in *District of Columbia v. Heller*, 554 U.S. 570 (2008) ("*Heller I*"), in which the U.S. Supreme Court struck down the District's general handgun ban, the D.C. City Council tried mightily to fashion the strictest possible restrictions on firearms that it could envision that might be upheld by a federal court.

18. One of the restrictions adopted by the D.C. Council was its one-handgun-a-month law. D.C. Code Ann. § 7-2502.03(e) provides, in pertinent part that "(e) The Chief shall register no more than one pistol per registrant during any 30-day period...."[7]

19. The U.S. District Court for the District of Columbia rejected a challenge to this prohibition in *Heller v. District of Columbia*, 45 F. Supp. 3d 35 (D.D.C. 2014). The court rejected the District of Columbia's argument that the one-handgun-a-month limit did not substantially burden the Second Amendment, but nevertheless applied intermediate scrutiny to uphold the infringement.[8]

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[7] The D.C. Chief of Police issued D.C. Mun. Regs. 24, § 2305.3 to implement that law ("The Chief shall register no more than one (1) pistol per registrant during any thirty- (30) day period; provided, that this restriction shall apply only to the initial registration of a pistol and not to the renewal of the registration of a pistol.")

[8] One of the studies that the district court found persuasive was that by D. Weil and R. Knox, "Effects of Limiting Handgun Purchases on Interstate Transfer of Firearms," 275 J.AM.MED.ASS'N 1759 (1996), which has been refuted by Professor David Kopel. D. Kopel, "Clueless: The Misuse of BATF Firearms Tracing Data," 1999 L. REV. MICH. ST. U. DET. C.L. 171.

20. On appeal, the D.C. Circuit also utilized "intermediate scrutiny" interest balancing but, under that test, found that the District of Columbia had not demonstrated a plausible rationale for its law. *See Heller v. District of Columbia*, 801 F.3d 264, 280 (D.C. Cir. 2015) ("*Heller III*").

21. The D.C. Circuit in *Heller III* concluded:

> The District has not presented substantial evidence to support the conclusion that its prohibition on the registration of "more than one pistol per registrant during any 30-day period" ... "promotes a substantial governmental interest that would be achieved less effectively absent the regulation..."

Id. at 279-80 (citations omitted).

22. The District had argued that its expert testimony indicated that placing limits on gun purchases by all might, in turn, limit trafficking in weapons by some. The D.C. Circuit rejected that argument as unsupported by the evidence. Second, the District argued that "'the most effective method of limiting misuse of firearms, including homicide, suicide, and accidental injuries, is to limit the number of firearms present in a home.'" *Id*. at 280. The D.C. Circuit flatly rejected that argument, stating:

> **Accepting that as true, however, it does not justify restricting an individual's undoubted constitutional right to keep arms (plural)** in his or her home, whether for self-defense or hunting or just collecting, because, taken to its logical conclusion, that reasoning **would justify a total ban** on firearms kept in the home.

Id. at 280 (emphasis added).

Other Developments Since 1993

23. Since Virginia's one-gun-a-month experiment in 1993, there have been numerous important developments in the legal landscape. First, on June 26, 2008, the U.S. Supreme Court decided *District of Columbia v. Heller*, 554 U.S. 570 (2008), which put to rest the "collective

rights" theory on which the 1993 Virginia Attorney General opinion finding the one-gun-a-month restriction to be constitutional was predicated. *Heller* held unequivocally that the right to keep and bear arms recognizes and protects the pre-existing right of individuals to keep and bear arms.

24. Second, the widely quoted statistic used in support of the 1993 bill, that 40 percent of the guns used in crimes in New York City came from Virginia, has been soundly refuted. In fact, as of 1993, ATF was tracing less than 2 percent of guns used in crime nationwide, and only about 6-8 percent of guns used in crime in New York City. *See* D. Kopel, "Do Federal Gun Traces Accurately Reflect Street Crime?" Independence Issue Paper 5-93 (Feb. 2, 1993).

25. Furthermore, "nearly 80% of BATF gun traces do **not** involve guns used in violent crime." *Id* (emphasis added). A study published by the Journal of the American Medical Association similarly reported that "[m]ost crime guns are not traced; most traced guns are not involved in violent crimes, and, as even this report acknowledges, traced guns may not be representative of recovered guns. Guns that are traced are not randomly chosen and are not representative of guns used in crime." P. Blackman, Ph.D., "*Effectiveness of Legislation Limiting Handgun Purchases*," *JAMA*, Oct. 2, 1996.

26. In short, the reality is that "only 32 guns (or 17% of the traces) of Virginia guns related to a violent crime. The rest were associated with technical violations ... or other non-violent offenses." Kopel at 7. Even ATF's own data specifically states that "[f]irearms selected for tracing are not chosen for purposes of determining which types, makes or models of firearms are used for illicit purposes. The firearms selected do not constitute a random sample and should

not be considered representative of the larger universe of all firearms used by criminals, or any subset of that universe."[9]

27. Third, shortly after Virginia's one-handgun-per-month law went into effect on July 1, 1993, the National Instant Criminal Background Check System ("NICS") was enacted as part of the Brady Handgun Violence Prevention Act, signed into law on November 30, 1993 (Pub. L. 103-159). The Brady Act began the five-year implementation of the modern NICS system (*see* 18 U.S.C. § 922(t)). The ostensible purpose of that law was to make it difficult for any individual not eligible to own a firearm to purchase one from a dealer. Thus, the Brady Act further weakened the alleged need for a one-handgun-per-month law, as it would be less likely that guns would be purchased by ineligible persons in Virginia or anywhere else, and then trafficked to New York.[10]

28. It has been illegal under federal law since the passage of the Gun Control Act of 1968 for anyone to receive, sell, give, or transfer a handgun to a resident of another state, unless the handgun is delivered to, and transferred through, a licensed firearms dealer in the recipient's state. *See* 18 U.S.C. § 922(a); *see also* Carter at 660-61. In other words, it has been and continues to be a federal felony since 1968 to be a "gun trafficker." Compliance with the federal background check law has also required that any such transfer include a background check of the recipient. Those who purchase multiple handguns for illicit resale in other states are already committing a serious federal felony.

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[9] *See, e.g.*, ATF New York Firearms Trace Data 2006, *available at* https://www.atf.gov/resource-center/docs/2006-trace-data-new-yorkpdf/download (last accessed May 20, 2020).

[10] In fact, Virginia has had its own state-level background check for purchases from dealers since 1989. *See* Va. Code § 18.2-308:2.2, first enacted by the Acts of the General Assembly, 1989, c. 745.

29. Furthermore, Virginia law has provided, since at least the mid-1990s, for severe penalties and mandatory minimum sentences for "gun trafficking," as set forth in the following portions of Va. Code § 18.2-308.2:2:

> 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 guilty of a Class 6 felony....
>
> 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 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.…

PARTIES

30. Valerie Trojan is a United States citizen, and resident of Goochland County, Virginia. She is a law-abiding person, and has no disqualification that would prevent her from keeping and bearing arms. Mrs. Trojan does not possess a Virginia Concealed Handgun Permit, nor does she qualify for any of the other exemptions in paragraphs 2(a) to 2(j) of the statute.

31. Brothers N Arms, Inc. is a Virginia corporation, and a federal firearms license holder ("FFL") licensed as a dealer in firearms, operating at 2978 River Rd. West, in Goochland, County, Virginia.

32. Plaintiff Virginia Citizens Defense League ("VCDL") is a Virginia non-stock corporation, with its principal place of business in Newington, Virginia. VCDL is organized and operated as a non-profit organization that is exempt from federal income taxes under Section 501(c)(4) of the U.S. Internal Revenue Code ("IRC"). VCDL has tens of thousands members and

operates as a non-profit, non-partisan, grassroots organization dedicated to advancing the fundamental human right of all Virginians to keep and bear arms, including as enumerated by Article I, Section 13 of the Constitution of the Commonwealth of Virginia.

33. Plaintiff Gun Owners of America, Inc. ("GOA") is a California non-stock corporation, with its principal place of business in Virginia, at 8001 Forbes Place, Suite 202, Springfield, VA 22151. GOA has over 2 million members and supporters, including tens of thousands in Virginia, and operates as a non-profit organization, exempt from federal income taxes under Section 501(c)(4) of the IRC. GOA's mission is to preserve and defend the inherent rights of gun owners.

34. Plaintiff Gun Owners Foundation ("GOF") is a Virginia non-stock corporation, with its principal place of business in Virginia, at 8001 Forbes Place, Springfield, VA 22151. GOF is organized and operated as a non-profit legal defense and educational foundation that is exempt from federal income taxes under § 501(c)(3) of the IRC. GOF is supported by gun owners across the country, including Virginia residents, and through contributions made through the Combined Federal Campaign.

35. Defendant Colonel Gary T. Settle is the Superintendent of the Virginia Department of State Police, which is the agency primarily responsible for administering and enforcing the statutes with respect to which this Complaint seeks declaratory, injunctive, and mandamus relief.

JURISDICTION AND VENUE

36. This Court has jurisdiction to grant the relief sought pursuant to Va. Code § 8.01-184, § 8.01-620, and § 8.01-645.

37. Venue is proper and preferred in this Court pursuant to Va. Code § 8.01-261(15)(c), § 8.01-261(1)(a), and § 8.01-261(5), and is otherwise proper.

OPERATIVE FACTS

38. Plaintiff Trojan wishes to shop at Brothers N Arms, Inc. in order to purchase multiple handguns during a single commercial transaction, on a date after July 1, 2020.

39. Plaintiff Trojan does not wish to return multiple times to the same store, fill out the same paperwork, and engage in the same often delayed and time-consuming background check, dragging out her purchase over the course of months, and impairing her constitutionally protected right to obtain firearms. Plaintiff Trojan does not qualify for any of the exemptions in the statute with respect to obtaining more than one handgun within a 30-day period. Nor does Plaintiff Trojan wish to obtain government preclearance from the VSP before purchasing multiple handguns.

40. Plaintiff Trojan is a member of GOA and VCDL.

41. Plaintiff Trojan is a wife, a mother, and a grandmother, and wishes to purchase multiple identical handguns, possibly as presents for family members, on a date after July 1, 2020, the effective date of the challenged statute.

42. Plaintiff Brothers N Arms possesses a wide inventory of firearms, and is willing to acquire firearms from its distributors that it does not have in inventory, including firearms that Plaintiff Trojan would seek to purchase. Plaintiff Brothers N Arms wishes to be able to sell multiple handguns to individual members of the public, including Plaintiff Trojan, but will be prohibited from doing so by the statute on July 1, 2020.

43. Unless the challenged statute is enjoined, Plaintiffs Trojan and Brothers N Arms, and other similarly situated, will be irreparably harmed. Plaintiff Trojan will be denied her right

to obtain firearms to keep and bear, as protected by Article I, Section 13, while Plaintiff Brothers N Arms's business will be harmed because it will be denied the opportunity to engage in commercial activity that is otherwise lawful, in addition to its rights under Article I, Section 13 being violated because it is not permitted to sell handguns to purchasers in quantities greater than one at a time. But for the challenged statute, Plaintiffs Trojan and Brothers N Arms wish to engage in a voluntary and otherwise lawful commercial transaction for the sale of multiple handguns within a 30-day period, but are prohibited from doing so by the challenged statute.

44. Countless other Virginians, many of whom comprise the members and supporters of the organizational Plaintiffs, will find themselves in a similar situation beginning on July 1, 2020. Thus, an injunction is necessary also to protect the rights of the organizational Plaintiffs' members and supporters.

45. The individual Plaintiff, Plaintiff gun store, along with the organizational Plaintiffs, their members, and supporters, will be irreparably harmed if the statute is permitted to take effect on July 1, 2020.

46. Because the statute being challenged will become effective in days, the threat of harm to Plaintiffs is imminent, and Plaintiffs possess no adequate remedy to compensate for their injury.

47. The balance of the equities weighs in Plaintiffs' favor. Plaintiffs' state constitutional rights will be violated in real and concrete ways on the effective date of the statute, while the only stated basis for the statute is to place quantitative limits on the lawful exercise of constitutional rights, and to prevent "gun trafficking" which is already illegal and punished severely under both state and federal law, and for which there is no credible proof that the problem even exists.

48. The public interest supports the granting of an injunction, because it is always in the public interest that the government not infringe enumerated constitutional rights.

ARGUMENT

I. VA. CODE § 18.2-308.2:2(R) VIOLATES ARTICLE I, SECTION 13 OF THE VIRGINIA CONSTITUTION.

49. The challenged statute significantly restricts the exercise of, and therefore infringes, the pre-existing right recognized and protected by Article I, Section 13, of the Virginia Constitution.[11] Article I, Section 13 of the Virginia Constitution states, in pertinent part:

> [t]hat a well regulated militia, composed of the body of the people, trained to arms, is the proper, natural, and safe defense of a free state, therefore, the right of the people to keep and bear arms shall not be infringed....[12]

50. The 1968 Virginia Commission on Constitutional Revision[13] stated:

> [t]hat most of the provisions of the Virginia Bill of Rights have their parallel in the Federal Bill of Rights is ... no good reason not to look first to Virginia's Constitution for the safeguards of the fundamental rights of Virginians. The Commission believes that the Virginia Bill of Rights should be a living and operating instrument of government and should, by stating the basic safeguards of the people's liberties, minimize the occasion for Virginians to resort to the Federal Constitution and the federal courts.

[*Report of the Commission on Constitutional Revision*, p. 86 (1969). *See also Richmond Newspapers, Inc. v. Com*., 222 Va. 574, 281 S.E.2d 915 (1981).]

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[11] Plaintiffs also believe that the challenged statute violates the Second Amendment to the United States Constitution, but in this case assert only a violation of the Virginia Constitution. There is no federal question presented.

[12] The first clause of Article I, Section 13 is original to the 1776 Virginia Declaration of Rights, while the second clause was added in 1971, adopting language drawn directly from the Second Amendment of the United States Constitution which had been ratified by the States 180 years earlier.

[13] The Virginia General Assembly passed a joint resolution in 1968 which created a Commission to study and recommend changes to the Virginia Constitution in the wake of the Civil Rights movement. The recommendations led to the overwhelming passage of numerous modifications to the Virginia Constitution, including the explicit language added to Article I, Section 13.

A. Article I, Section 13 Protects the Same Rights As the Second Amendment, but Virginia Courts Have Always Taken a Different Approach to Interpret the Right to Keep and Bear Arms.

51. Although the prefatory clauses of the federal and Virginia constitutional provisions differ somewhat, these two protections of the right to keep and bear arms generally have been viewed as having the same scope and meaning.[14] A January 13, 1993 Virginia Attorney General legal opinion concluded that it is "clear that the 'right to bear arms' language of Article I, § 13 ... tracks the Second Amendment ... and ... judicial interpretation of the Second Amendment thus applies equally to Article I, § 13."

52. Likewise, the Supreme Court of Virginia has more recently noted that "provisions of the Constitution of Virginia that are substantively similar to those in the United States Constitution will be afforded the same meaning," and concluded that the state provision "is coextensive with the rights provided by the Second Amendment ... concerning all issues in the instant case." *Digiacinto v. Rector & Visitors of George Mason Univ.*, 704 S.E.2d 365, 369 (Va. 2011).

53. Due to the similarity of the federal and state provisions, and the decisions of Virginia courts interpreting them coextensively, this Complaint addresses authorities under the Second Amendment, although – for avoidance of doubt – it seeks relief *solely* for a violation of Article I, Section 13 of the Constitution of Virginia. Certainly, the rights of Virginians under its State Constitution can be no less expansive than under the Second Amendment to the United States Constitution. *See McDonald v. City of Chicago*, 561 U.S. 742 (2010).

54. Aside from *Digiacinto*, and a few cases discussed below, Virginia courts have not had occasion to expound on the meaning of either state or federal constitutional protections for

[14] Of course, that does not mean that Virginia courts must agree with federal courts about what that scope and meaning *is* in every application.

the right to keep and bear arms, largely due to the Commonwealth's historically strong protection for these rights. As one commentator put it, "[w]here a constitutional right is respected by the legislature, it would seem to be a virtue that few judicial decisions are necessary."[15]

55. In contrast to the lack of Virginia court cases interpreting the right to keep and bear arms, there have been many Second Amendment challenges to state and federal laws elsewhere around the nation due to the many laws, both new and old, affecting access to firearms. The U.S. Court of Appeals for the Fourth Circuit has decided several firearms cases, primarily originating in Maryland, whose state constitution contains no protection of the right to keep and bear arms, and where repeated severe infringements on the right to keep and bear arms have been enacted by its legislature. As far back as *United States v. Johnson*, 497 F.2d 548 (4th Cir. 1974), the Fourth Circuit concluded that "the Second Amendment only confers a collective right...." *Id.* at 550. *See also Love v. Pepersack*, 47 F.3d 120, 123-24 (4th Cir. 1995) (reaffirming the court's "collective rights" holding and claiming that "[t]he Second Amendment does not apply to the states.").[16] Of course, the Fourth Circuit was not alone in its misestimation of Second Amendment rights, as every federal court (except one[17]) to consider the issue prior to *District of Columbia v. Heller*, 554 U.S. 570 (2008) arrived at that same erroneous conclusion.[18]

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[15] S. Halbrook, "The Right to Bear Arms in the Virginia Constitution and the Second Amendment: Historical Development and Precedent in Virginia and the Fourth Circuit," LIBERTY UNIV. L.REV. Vol. 8, Issue 3 at 646 (Oct. 2014).

[16] In *Heller*, the Court soundly refuted the collective rights theory - it was not even a close call - every federal court got it wrong. *District of Columbia v. Heller*, 554 U.S. 570, 579 (2008).

[17] *See United States v. Emerson*, 270 F.3d 203, 260 (5th Cir. 2001).

[18] *See, e.g.*, *Thomas v. Members of City Council of Portland*, 730 F.2d 41, 42 (1st Cir. 1984); *United States v. Graves*, 554 F.2d 65, 66 n.2 (3d Cir. 1977); *United States v. Napier*, 233 F.3d 394, 403 (6th Cir. 2000); *Gillespie v. City of Indianapolis*, 185 F.3d 693, 710 (7th Cir.

56. During the same period that the federal courts were narrowing the scope of the Second Amendment to protect nothing more than a state government's inherent power to raise a military force, Virginia was on a very different track. For example, in 1964, the General Assembly passed a resolution recognizing "the right of the citizen" and "the individual's right to bear arms but [also] his duty to bear arms," noting that the protection of all other freedoms "has been allied with the right to bear arms or the deprivation of such rights," and resolving that this "inalienable part of our citizens' heritage" should be protected against any "power which would prohibit the purchase or possession of firearms...." Journal of the Senate (Va.) 250-51, 472 (1964). Similarly, in 1970, when debating whether to send the 1971 constitutional revision to Article I, Section 13 to the voters, both branches of the General Assembly again made clear that the right to keep and bear arms is one "guaranteed to the citizens."[19]

57. Consistent with the General Assembly's clear understanding of the Article I, Section 13 right to keep and bear arms as an individual right, Plaintiffs have been unable to identify any Virginia court decision that expressly adopted the "collective right" doctrine ultimately rejected in *Heller*. Indeed, if there is any difference to be found between Article I, Section 13 and the Second Amendment, it is that the Virginia provision is even more clear in its protection of an **individual** right of **citizens**, stating unambiguously that the militia is "composed of the body of the people, trained to arms...." In short, even before *Heller*, the Commonwealth had soundly rejected the federal courts' now-defunct collective rights view of the right to keep and bear arms.

1999); *United States v. Nelsen*, 850 F.2d 1318, 1320 (8th Cir. 1988); *United States v. Bayles*, 310 F.3d 1302, 1307 (10th Cir. 2002); *United States v. Wright*, 117 F.3d 1265, 1273 (11th Cir. 1997).

[19] *See* Proceedings and Debates of the Senate of Virginia Pertaining to the Amendment of the Constitution, Extra Session 1969/1970, 391 (1970); House at 775 (Statement of Del. Slaughter); Senate at note 10 at 392 (Statement of Sen. Barnes & Sen. Bateman).

58. Similarly, Virginia courts have not adopted, and indeed have expressly declined to adopt, the watered down "two-step" test adopted by some federal courts in the wake of *Heller* and *McDonald v. City of Chicago, supra*. *See, e.g., Kolbe v. Hogan*, 849 F.3d 114 (4th Cir. 2017). Nor have Virginia courts applied what Justice Scalia (and the *Heller* majority which joined his opinion) rejected as "judge-empowering" interest-balancing tests – particularly the "intermediate scrutiny test" that many judges have used to justify infringements of firearms rights (the position urged in the *Heller* dissent by Justice Breyer). *See Heller* at 689 (Breyer, J., dissenting).[20]

59. Resisting the interest-balancing trend in certain federal courts, in 2011 the Supreme Court of Virginia used a type of categorical approach to decide that George Mason University's firearms ban "inside campus buildings and at campus events" was constitutional because "GMU is a sensitive place" as referenced in *Heller*. *Digiacinto* at 136. The court also noted that "a university traditionally has not been open to the general public, 'but instead is ... devoted to its mission of public education.'" *Id.* Rather than balancing the individual's need for firearms against the university's need to restrict them, the Supreme Court instead held that the carrying of firearms in certain narrow categories of places is outside the scope of the right to keep and bear arms based on text, history, and tradition – consistent with the U.S. Supreme Court's analytical approach in *Heller*.

60. Likewise, in 2016, the Court of Appeals of Virginia explicitly declined to adopt the "two-step" test, or apply a balancing test using a "standard of scrutiny," in spite of the fact

[20] Together, adoption of the atextual two-step test, and "intermediate scrutiny" balancing, have done great damage to a proper understanding of the Second Amendment, by enabling many judges to substitute their judgment for the judgment of those who wrote and ratified the constitutional text, and to decide cases upholding all but the most extreme gun control legislation.

that the Fourth Circuit has applied such tests. Rather, the court determined that the temporary ban on firearm possession by a juvenile felon was "so closely analogous to the presumptively valid ban on possession of firearms by felons" that the activity was categorically outside the scope of Second Amendment protection." *Prekker v. Commonwealth*, 66 Va. App. 103, 116-17 (Ct. App. Va. 2016). Once again, the Virginia appellate court looked to the test, history, and tradition of the right to keep and bear arms, as described in *Heller*, rather than to any judicially created "balancing test." *See also Lynchburg Range & Training v. Northam*, 2020 Va. Cir. LEXIS 57, *9 (2020) ("The Court declines to invent a level of scrutiny to circumvent the text in the statute.").

61. Even in the federal courts, the tide is turning against the "two-step" test and the application of "intermediate scrutiny" in the Second Amendment context in the federal courts. Several Supreme Court justices have rejected those judicial machinations.[21] Criticism of judicial balancing has come from the lower federal courts as well.[22] Despite the Commonwealth's

[21] *See Jackson v. City & Cnty. of San Francisco*, 135 S.Ct. 2799-2800, 2801-02 (2015) (Thomas, J., dissenting from denial of certiorari) (explaining that "Second Amendment rights are no less protected by our Constitution than other rights enumerated in that document,@ noting that A[d]espite the clarity with which we described the Second Amendment=s core protection for the right of self-defense, lower courts ... have failed to protect it,@ and making clear that "courts may not engage in this sort of judicial assessment as to the severity of a burden imposed on core Second Amendment rights."); *Heller* and *McDonald*.@ *Friedman v. City of Highland Park*, 136 S.Ct. 447, 448 (2015) (Thomas, J. and Scalia, J., dissenting from denial of certiorari) (criticizing the lower court's Acrabbed reading of *Heller*, which left the Circuit Afree to adopt a test for assessing firearm bans that eviscerates many of the protections recognized in *Heller and McDonald.*); *Peruta v. California*, 137 S.Ct. 1995, 1996-97 (2017) (Thomas, J. and Gorsuch, J., dissenting from denial of certiorari); *Silvester v. Becerra*, 138 S.Ct. 945 (2018) (Thomas, J., dissenting from denial of certiorari) (noting "the lower courts are resisting this Court=s decisions in *Heller* and *McDonald* and are failing to protect the Second Amendment to the same extent that they protect other constitutional rights.").

[22] In the year after *McDonald*, the D.C. Circuit upheld D.C.'s modified gun regulation scheme, but then-Judge (now Justice) Kavanaugh dissented and would have held that A*Heller* and *McDonald* leave little doubt that courts are to assess gun bans and regulations based on text, history, and tradition, not by a balancing test such as strict or intermediate scrutiny.@ *Heller II*

expected invitation to do so, there is simply no reason for a Virginia Court to adopt the interest balancing used by some federal courts when interpreting the U.S. Constitution, to interpret Article I, Section 13 of the Virginia Constitution.

62. Other than to facilitate the circumvention of the plain language of the text, there is simply no reason to conduct an interest balancing inquiry into the Article I, Section 13 right to keep and bear arms. Like the Supreme Court noted of the Second Amendment in *Heller*, Article I, Section 13 "is the very product of an interest balancing by the people." *See id.* at 635. Unlike the Second Amendment, however, which was ratified in 1791, the Article I, Section 13 balancing reoccurred as recently as 1971.

B. The Challenged Statute Infringes the Right of the People to Keep and Bear Arms.

63. For the reasons set forth *supra*, Plaintiffs urge this Court to decline to follow the interest balancing approach which has undermined the clear meaning of the right to keep and bear arms, and the Commonwealth's expected invitation to the Court to use "intermediate scrutiny" to perform a "two-step" sidestep around the unambiguous text and meaning of Article I, Section 13. Rather, the Court should analyze the meaning of the Virginia constitutional right to keep and bear arms according to the same approach followed in *Heller* -- "text and history." *Heller* at 555. *See Lynchburg Range & Training, LLC v. Northam*, 2020 Va. Cir. LEXIS 57

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at 1271. *See also Fisher v. Kealoha*, 855 F.3d 1067, 1072 (9th Cir. 2017) (Kozinski, J., ruminating) (encouraging equal treatment of the Second Amendment among the Bill of Rights: "The time has come to treat the Second Amendment as a real constitutional right. It=s here to stay."); *see also Houston v. City of New Orleans*, 675 F.3d 441, 448 (5th Cir. 2012) (Elrod, J., dissenting), opinion withdrawn and superseded on reh=g, 682 F.3d 361 (5th Cir. 2012) (*per curiam*); *NRA v. BATFE*, 714 F.3d 334 (5th Cir. 2013) (six judges dissenting from a denial of rehearing *en banc*); *see also Mance v. Sessions*, 896 F.3d 390, 394 (5th Cir. 2018) (Elrod, J. dissenting with six other judges) ("Simply put, unless the Supreme Court instructs us otherwise, we should apply a test rooted in the Second Amendment's text and history C as required under *Heller* and *McDonald* C rather than a balancing test like strict or intermediate scrutiny."

(Lynchburg Cir. Ct. April 27, 2020) at *10 ("courts must apply the meaning of the text at the time it was adopted because failing to exercise this duty would render worthless the rights contained in the text.")

64. The text of Article I, Section 13 does not employ terms such as "fundamental" or "core" rights, or look to the "severity" of infringements on those rights, requiring varying levels of balancing tests based on "the nature of the conduct being regulated and the degree to which the challenged law burdens the right." *See United States v. Chester*, 628 F.3d 673, 682 (4th Cir. 2010). It does not authorize courts to give lesser protection to rights that judges do not deem fundamental. Rather, Article I, Section 13 establishes a very different bright line standard — "shall not be infringed." That language was selected by the 1968 Commission, and overwhelmingly ratified by the people of Virginia in 1971. It is simple and clear, limiting the power of government over the people, and providing no credible way for legislators, lawyers, and judges to fashion ways to disregard its protections. According to the text, *any* infringement of this constitutionally protected right is too much.

65. Applying this simple, textual, straightforward test in this case, the individual plaintiffs, along with the tens of thousands of members and supporters represented by the organizational plaintiffs, are clearly part of "the People" discussed in Article I, Section 13. They are law-abiding adults, part of "'a class of persons who are part of a national community or who have otherwise developed sufficient connection with this country to be considered a part of that community'" (*Heller* at 580), with no disqualification under federal or state law from acquiring and possessing firearms.

66. Next, the handguns they wish to purchase (without quantitative limitation) are indisputably protected "arms" and, according to the U.S. Supreme Court, constitute "the

quintessential self-defense weapon," being "the most popular weapon chosen by Americans for self-defense in the home."[23] *Heller* at 629.

67. Finally, in order to engage in the protected activities of "keeping" and "bearing" firearms, weapons first must be acquired. It is beyond serious debate that Article I Section 13 thus protects the corresponding right to purchase firearms, just as the First Amendment protects the right to purchase books, paper, and ink. Multiple courts have held as much, which recently cited favorably the Seventh Circuit's opinion that "[t]he right to possess firearms for protection implies a **corresponding right to acquire** and maintain proficiency in their use; the core right wouldn't mean much without the training and practice that make it effective." *Lynchburg Range & Training, LLC v. Northam*, at *7 (citing *Ezell v. City of Chicago*, 651 F.3d 684, 704 (7th Cir. 2011)) (emphasis added).[24] *See also Jackson v. City & County of San Francisco*, 746 F.3d 953, 967 (9th Cir. 2014) ("Thus 'the right to possess firearms for protection implies a **corresponding right' to obtain** the bullets necessary to use them.") (emphasis added).

68. Article I, Section 13 categorically and unequivocally protects certain persons ("the People"), engaged in certain activities ("keep" and "bear") with respect to certain weapons

[23] It should go without saying, but Article I, Section 13 protects modern handguns such as those plaintiffs (and their members) wish to purchase. The Court of Appeals of Virginia "rejected" the idea of "limiting the right to keep and bear arms only to muskets because more modern firearms came to be at a later point in time." *Prekker* at 121 n.12 (*citing Heller*, 554 U.S. at 582 ("Some have made the argument, bordering on the frivolous, that only those arms in existence in the 18th century are protected by the Second Amendment. We do not interpret constitutional rights that way. ... the Second Amendment extends, *prima facie*, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding.").

[24] *Cf.* the Fourth Circuit's unpublished opinion in *United States v. Chafin*, 423 Fed. Appx. 342, 344 (4th Cir. 2011) ("Chafin has not pointed this court to any authority, and we have found none, that remotely suggests that, at the time of its ratification, the Second Amendment was understood to protect an individual's right to sell a firearm. Indeed, although the Second Amendment protects an individual's **right to bear arms**, it does **not** necessarily give rise to a corresponding right to sell a firearm."). (Emphasis added.)

("arms"). All three criteria are indisputably met here. Because § 18.2-308.2:2(R) attempts to places impediments to a citizen's right to purchase handguns, this leads to one inescapable conclusion — the statute is unconstitutional on its face.

69. Indeed, the operation of the restriction that would be imposed by § 18.2-308.2:2(R) is not just any type of infringement of a right that "shall not be infringed," but a grossly overreaching infringement on the right of Virginians to keep and bear arms. In effect, it *presumes* that *any and every* person who may otherwise lawfully purchase and possess handguns must be a criminal "gun trafficker" if he wishes to purchase more than one handgun in a 30-day period, and enjoins him from doing so. The statute then places the onus on such a person to prove to the police that he is *not* a gun trafficker -- despite the fact that "gun trafficking" has long been and continues to be a felony under both state and federal law -- by requiring him to complete a burdensome "enhanced background check" beyond the normal criminal background check already in place for retail firearm sales, and providing responses to intrusive inquiries about why he "needs" more than one handgun, or what he intends to do with them. Such requirements to demonstrate "need" and to shift the onus from the government to the individual, in order to exercise an enumerated right, turns the very concept of a "right" on its head.

70. The peril of this infringement is further illustrated by an undefined non-judicial process that the purchaser must initiate, devoid of any ascertainable standards, through which the purchaser "shall state the purpose for the purchase above the limit, and shall require satisfactory proof of residency and identity." The VSP must then be "satisfied" that these "requirements have been met." It is entirely unclear what "purposes" for obtaining multiple handguns would "satisfy" the VSP. Is "as a safeguard against tyranny" a satisfactory response? *See Heller* at 600.

71. The statute is no less an infringement on the right to keep and bear arms than is limiting persons to purchasing one Bible per month would be an infringement on the rights of Virginians under Article I, Section 12 of the Virginia Constitution (analogous to the First Amendment). Indeed, the statute's restriction is jurisprudentially indistinguishable from arbitrary rationing or numerical limits on any other enumerated right. It would be unfathomable if the General Assembly attempted to place limits on how many times per week a newspaper could be published, how many abortions a woman could receive in a decade, or how many times a court-appointed criminal defense lawyer could be appointed for an indigent defendant facing jailable offenses during a lifetime, could receive for, to name but a few examples illustrative of this problem. Fortunately, this nation's founders did not place numerical limits in the Bill of Rights, and those Virginians who ratified Article I, Section 13 did not see fit to add any.

72. Both the Supreme Court of Virginia and the U.S. Supreme Court have been clear that the correct approach is to punish those few who abuse the right rather than restrain the many who do not. People who illegally "traffic guns" are already subject to severe penalties for doing so, and presumably constitute a miniscule proportion of all gun purchasers. There is "a theory deeply etched in our law: a free society prefers to punish the few who abuse rights ... after they break the law than to throttle them and all others beforehand." *KMA, Inc. v. City of Newport News*, 228 Va. 365, 323 S.E.2d 78 (1984).

73. U.S. Supreme Court Chief Justice Charles Evans Hughes, in the seminal case of *Near v. Minnesota*, 283 U.S. 697 (1931), summarized the issue similarly: "The fact that liberty of the press may be abused by miscreant purveyors of scandal does not make any the less necessary the immunity of the press … Subsequent punishment for such abuses as may exist is

the appropriate remedy, consistent with constitutional privilege." *Id.* at 720. So it must be for the Commonwealth's approach to deter and punish already-felonious "gun trafficking."

74. The statute at issue seeks to impose an infringement on the rights of Virginia citizens under Article I, Section 13 of the Virginia Constitution, by enjoining them from purchasing more than one handgun in a 30-day period, and imposing a non-judicial process with no ascertainable standard in order to circumvent the infringement.

RELIEF SOUGHT

Declaratory Relief

75. Plaintiffs seek entry of an order of declaratory judgment declaring the limitation on purchase of more than one handgun in a 30-day period contained in § 18.2-308.2:2(R) to violates Article I, Section 13 of the Constitution of Virginia.

76. The purpose of Va. Code § 8.01-184 is remedial. The statute was enacted "to afford relief from the uncertainty and insecurity attendant upon controversies over legal rights, without requiring one of the parties interested so to invade the rights asserted by the other as to entitle him to maintain an ordinary action therefor." Va. Code § 8.01-191. *See also Liberty Mutual Ins. Co. v. Bishop*, 211 Va. 414, 418, 177 S.E.2d 519, 522 (1970) (*citing Criterion Ins. Co. v. Grange Mutual*, 210 Va. 446, 448-49, 171 S.E.2d 669, 671 (1970)).

77. Declaratory judgments are intended to determine the *rights* of parties with respect to established writings and principles, rather than to determine disputed *facts* upon which the resolution of some dispute may depend. *Williams v. Southern Bank of Norfolk*, 203 Va. 657, 663, 125 S.E.2d 803, 807 (1962) (quoting 16 Am. Jur., "Declaratory Judgments," § 20 at 294-95); *accord Hoffman Family, L.L.C. v. Mill Two Associates P'ship*, 259 Va. 685, 693, 529 S.E.2d 318, 323 (2000); *Green v. Goodman-Gable-Gould Co., Inc.*, 597 S.E.2d 77, 268 Va. 102 (2004).

78. The Supreme Court of Virginia has repeatedly made clear that facial challenges to the constitutionality of a statute as violative of self-executing provisions of the Constitution of Virginia present a justiciable controversy over which the Court has jurisdiction and power to enter a declaratory judgment. *See Daniels v. Mobely*, 737 S.E.2d 895 (Va. 2013), citing *DiGiacinto v. Rector & Visitors of George Mason Univ.*, 281 Va. 127, 137, 704 S.E.2d 365, 371 (2011).

Temporary and Permanent Injunctive Relief

79. Plaintiffs incorporate and re-allege the foregoing paragraphs as though fully set forth herein.

80. In granting a temporary injunction, the Court must look to the following criteria: (1) the likelihood of success on the merits; (2) whether the plaintiffs are likely to suffer irreparable harm if the injunction is not granted; (3) whether the balance of equities tips in plaintiffs' favor; and (4) a showing that the injunction would not be adverse to the public interest. *See The Real Truth About Obama, Inc. v. FEC*, 575 F.3d 342, 346 (4th Cir. 2009) (applying the test set forth in *Winter v. NRDC, Inc.*, 555 U.S. 7 (2008)). *See also McEachin v. Bolling*, 84 Va. Cir. 76, 77 (Richmond Cir. Ct. 2011).

81. Virginia courts have widely adopted the *Real Truth* analysis in the absence of any specific elemental test from the Supreme Court of Virginia or applicable statutes. *See, e.g., BWX Techs., Inc. v. Glenn*, 2013 Va. Cir. LEXIS 213 (Lynchburg Cir. Ct. 2013); *McEachin* at 77. *See also CPM Va., L.L.C. v. MJM Golf, L.L.C.*, 94 Va. Cir. 404, 405 (Chesapeake Cir. Ct. 2016) (listing several Virginia Circuit Courts which have used the federal four-part test).

82. Plaintiffs seek a temporary injunction, enjoining the VSP from administering, enforcing, and otherwise imposing the requirements of Va. Code § 18.2-308.2:2(R) upon the

Plaintiffs, the members and supporters of the organizational plaintiffs, and others similarly situated in the Commonwealth.

83. A temporary injunction allows a court to preserve the status quo between the parties while litigation is ongoing. *Iron City Sav. Bank v. Isaacsen*, 158 Va. 609, 625, 164 S.E. 520 (1932); *May v. R.A. Yancey Lumber Corp.*, 822 S.E.2d 358 (Va. 2019). In this case, the status quo is that Virginians may fully exercise their rights under Article I, Section 13, and are not yet hindered by the statute set to take effect on July 1, 2020.

84. The Plaintiffs have a substantial likelihood of success on the merits given that the challenged statute directly and significantly infringes an enumerated right. What's more, the statute provides no objective standards for, or judicial review of, VSP issuance of permits. The Plaintiffs also have a substantial likelihood of success as the ostensible harm sought to be alleviated by the Commonwealth – "gun trafficking" – is already a crime, and thus the challenged statute is superfluous in addition to being facially violative of Article I, Section 13.

85. It is well established that the loss of a fundamental right, for even minimal periods of time, unquestionably constitutes irreparable harm. *See Elrod v. Burns*, 427 U.S. 347, 373 (1976). Without relief from this Court, Plaintiffs and countless other Virginians will be irreparably denied their right to keep and bear arms (plural) as guaranteed by Article I, Section 13 of the Virginia Constitution. By being forced to wait at least 30-days before purchasing a second handgun, Plaintiffs cannot exercise their constitutional rights to acquire firearms except by special, temporary, and arbitrarily granted permission of the state, should they need or desire to purchase more than one handgun during the restricted period. It is also clear from the facts set forth in this case that no adequate remedy at law exists, as monetary damages would be both inappropriate and incalculable for the harm inflicted by the challenged statute.

86. The balance of equities favors granting a temporary injunction pending the outcome of this case. Unlike the real and concrete irreparable harm that will befall Plaintiffs under this new law, the basis for the new law is nothing but purely hypothetical and speculative, and based on vague conjecture about the efficacy of yet another law designed to prevent "gun trafficking" that is already a crime. Indeed, there is no credible proof of such gun trafficking, or that the challenged statute would have any effect on such already-illegal gun trafficking. However, the statute would infringe on the rights of citizens. The issuance of a temporary injunction would merely maintain the status quo with respect to the rights of the people to have lawful access to firearms.

87. The granting of a temporary injunction would clearly not be adverse to the public interest. As stated already, the challenged statute seeks to move the law further, unnecessarily, and unconstitutionally, up the causal chain in the world of "gun trafficking," the magnitude of which is at best unclear. It seeks to impose an infringement on an enumerated right, under the pretense of trying to reduce the commission of an act ("gun trafficking") that has been punishable as a state and federal felony for decades. The public interest in such an enactment is pre-textual and non-existent. Not issuing a temporary injunction, on the other hand, would immediately, undoubtedly, and substantially infringe the enumerated rights of countless firearm purchasers throughout Virginia starting on July 1, 2020.

88. The injunction sought should apply statewide, and enjoin Defendant's enforcement of the statute as against all necessary parties situated similarly to the named Plaintiffs. To be clear, it is only state actors who would be enjoined, and thus all parties to be enjoined are named in this case. Virginia Circuit Courts have broad, state-wide authority to issue injunctions, including injunctions that enjoin parties and actions outside of their particular

Circuit. Virginia Code § 8.01-620 sets forth the authority for Circuit Courts to enter injunctions, and provides that "[e]very circuit court shall have jurisdiction to award injunctions, … whether the judgment or proceeding enjoined be in or out of the circuit, or the party against whose proceedings the injunction be asked resides in or out of the circuit."

89. First, as the Virginia Supreme Court has noted, "[t]he only limitation on the **State-wide jurisdiction** of the Circuit Court of the city of Richmond, given by section 5890 and the common law, is found in the venue statutes [which] were never intended to repeal or modify section 5890 and thereby deprive the chancery courts of any portion of the jurisdiction conferred upon them by that section." *Southern Sand & Gravel Co. v. Massaponax Sand & Gravel Corp.*, 145 Va. 317, 326 (1926) (emphasis added) (section 5890 was the jurisdictional statute which preceded Va. Code § 17.1-513). Likewise, the Supreme Court has stated that "where the proper parties are before a circuit court, then by virtue of the statute ... and the common law on the subject, its territorial jurisdiction over persons and property is **co-extensive with the bounds of the whole State**...." *Moore v. Norfolk & W. R. Co.*, 124 Va. 628 (1919) (emphasis added).

90. Second, under Virginia precedent, a litigant has standing if he has "a sufficient interest in the subject matter of the case so that the parties will be actual adversaries and the issues will be fully and faithfully developed." *Cupp v. Board of Supervisors*, 227 Va. 580, 589, 318 S.E.2d 407, 411 (1984). Analyzing this standing issue further with respect to voter rights in *Howell v. McAuliffe* 788 S.E.2d 706 (2016), the Supreme Court of Virginia stated that "[e]very qualified voter (though not every member of the general public) suffers the same vote-dilution injury. To rule otherwise would be to hold that unlawful vote dilution occurring within a geographic subset of a state triggers standing, but an equally unlawful vote dilution of far greater proportions, one affecting the entire state, does not." *Id*. at 714.

91. Finally, a court can choose to proceed without a necessary party if: (1) it is "practically impossible" to join a necessary party and the missing party is represented by other parties who have the same interests; (2) the missing party's interests are separable from those of the present parties, so the court can rule without prejudicing the missing party; or (3) a necessary party cannot be made a party, but the court determines that the party is not indispensable. *Marble Techs., Inc. v. Mallon* , 290 Va. 27, 32, 773 S.E.2d 155, 157 (2015); Rule 3:12(c).

92. Plaintiffs Virginia Citizens Defense League and Gun Owners of America, Inc. widely represent the interests of individuals throughout the Commonwealth who will have their right to keep and bear arms infringed, should enforcement of this statute not be enjoined. Individual Plaintiff Valerie Trojan fully and faithfully represents the interests of others who will have their right to keep and bear arms infringed, should enforcement of this statute not be enjoined. Plaintiff Brothers N Arms fully and faithfully represented the interests of licensed firearms dealers whose constitutional and pecuniary interests will be harmed. These Plaintiffs, collectively, fully and faithfully represent the interests of all stakeholders in this case, and it would be "practically impossible" to join every dealer in the Commonwealth, let alone every citizen whose constitutional rights will be violated by enforcement of this statute.

93. Plaintiffs also seek a permanent injunction enjoining the VSP from administering, enforcing, and otherwise imposing the requirements of Va. Code § 18.2-308.2:2(R).

CONCLUSION

WHEREFORE, for the foregoing reasons, the Plaintiffs, by counsel, move this Court for (1) declaratory relief in the form of a finding that § 18.2-308.2:2(R) (effective July 1, 2020) is unconstitutional under Article I, Section 13 of the Constitution of Virginia, (2) issuance of a

temporary injunction enjoining the enforcement of § 18.2-308.2:2(R) until such time as this case is full adjudicated, and (3) issuance of a permanent injunction which enjoins the administration, enforcement, and imposition of the requirements if § 18.2-308.2:2(R); (4) a writ of mandamus to enjoin enforcement of Va. Code § 18.2-308.2:2(R) as well as notifying the public of the injunction, and (5) such other and further relief as the Court may deem appropriate

Respectfully Submitted,

VALERIE TROJAN
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CERTIFICATE OF SERVICE

In accordance with Va. Code § 8.01-629, the undersigned certifies that on June __, 2020, a true and accurate copy of the foregoing Complaint and Petition was served upon the following, thereby giving notice of the same:

INSERT

_____
David G. Browne