Commonwealth of Virginia

FIFTEENTH JUDICIAL CIRCUIT

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June 18, 2026

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Re: DUSTIN R. CURTIS, et al., v. COLONEL JEFFREY S. KATZ, et al.
Spotsylvania Circuit Court Case No. CL26-2454
Letter Opinion—by email and first class mail

Gentlemen:

This matter came before the Court on Wednesday, June 17, 2026 for hearing upon the Motion for Preliminary Injunction filed herein by the Plaintiffs. The Plaintiffs appeared by counsel, as did the Defendant Col. Jeffrey Katz, represented by the Office of the Attorney General and the Solicitor General. Defendant Ryan Mehaffey appeared pro se.

The Court heard argument of counsel and Mr. Mehaffey and took the matter under advisement. This letter opinion states the analysis and decision of the Court. For the reasons stated herein, the Court denies the Motion for Preliminary Injunction.

Brief Statement of the Case

The Complaint filed herein seeks a declaratory judgment from this Court prohibiting the Defendants Col. Katz, Ryan Mehaffey and Sheriff Roger Harris from enforcing two recently enacted laws, Senate Bill 749 and House Bill 217 (Va. Code Sec. 18.2-287.4:1(B) and 18.2-308.22(F) known for simplicity's sake as the Firearms Ban, and Va. Code Sec. 18.2-309.1(A)-(C), known as the Magazine Ban.)

These statutory amendments are scheduled to become effective July 1, 2026. The Complaint herein was filed on May 19, 2026, just 5 days after the statutes were signed into law by Governor Spanberger. On June 3, 2026 Plaintiffs filed their Petition for Temporary Injunction, along with the Declaration of plaintiff Blaustein and Reich, d/b/a Bob's Gun Shop, by its president Stephen A. Dowdy. Plaintiffs also filed a "Joint Statement of Facts" with pro se Defendants Mehaffey and Roger Harris.

On June 10, 2026 Mehaffey filed his Brief in Response to Plaintiff's Motion for Temporary Injunction.

On June 12, 2026, Katz filed his Opposition to the Preliminary Injunction, along with Declarations and supporting documentation from Randolph Roth, James Yurgealitis, Lucy Allen, Andrew McKevitt, Kevin Sweeny, Robert Spitzer, Louis Klarevas, and Brian DeLay.

On June 15, 2026, Plaintiffs filed their Reply Memorandum with several hundred pages of supporting documents, and the verifications of plaintiffs Michael Woods and Daniel Hinkson.

Also on June 15, 2026, Professor A.E. Dick Howard filed a Motion to file Brief as Amicus Curiae In Support of Defendants and In Opposition to Plaintiffs' Motion for a Preliminary Injunction.

The Plaintiffs filed, on June 16, 2026, their opposition to the Motion of Professor Howard. On June 18, 2026 Plaintiffs filed their reply to the Howard Amicus filing.

Discussion

Plaintiffs assert two basic propositions—first that Article 1, Sec. 13 of the Virginia Constitution (hereinafter "Sec. 13") creates an individual right to Virginia citizens to possess and bear arms as members of the "unorganized militia"; second, that based on historical precedent, particularly that of the seventeenth and eighteenth centuries, the weaponry guaranteed to individual members of the unorganized militia must be the civilian analogue of the basic firearms of the military.

Plaintiffs argue that the rifles and handguns prohibited by the Firearms Ban are "quintessential Militia Arms." They elaborate the equivalence between AR15 style rifles and the M4 carbine used by the Military and law enforcement. Similarly, they describe the 17 round Sig Sauer P320 as the standard sidearm for both military and law enforcement. This equivalence informs the Plaintiffs argument that Sec. 13 requires the unorganized militia have access to the weapons prohibited by the challenged statutes. Further, Plaintiffs argue that the Magazine Ban prohibits similarly military equipment.

Plaintiffs assert that Sec. 13 has an "independent operative forec," and that it is "self-executing." Plaintiffs then argue that pursuant to United States v Miller, 307 US 174 (1939), that weapons bearing "some reasonable relationship to the preservation of a well-regulated militia" are protected by the Second Amendment.

Plaintiffs contend:

> The significance for this Court's analysis is twofold. First, the historical record establishes that the militia clause was not merely aspirational when adopted in 1776—it was the constitutional embodiment of a functioning system of citizen self-armament that the General Assembly had maintained and reinforced for over 150 years. Second, the record demonstrates that the Act is not merely unsupported by historical tradition—it is the precise inverse of that tradition. No Virginia statute has ever provided, and no Virginia court has ever held, that the militia clause permits the General Assembly to prohibit the body of the people from acquiring militia-standard arms. The historical tradition affirmatively required such acquisition. The Act prohibits what the Commonwealth's Constitution and founding-era laws commanded.

Plaintiffs secondarily rely on the proposition that the 1971 amendment to Sec. 13 of the Virginia Constitution creates rights coextensive with those protected by the Second Amendment of the United States Constitution. Plaintiffs agree that, essentially, because the banned firearms and magazines are in "common use" they are protected from the type of regulations set out in the challenged Virginia statutes.

Plaintiffs concede without qualification that their theory of individual rights stemming from the militia clause is novel, and that their challenge to the Virginia Statutes creates an issue of first impression.

Ryan Mehaffey argued on his own behalf, and entirely in agreement with the positions taken by the Plaintiffs. Mehaffey asserted that Sec. 13 insures that "when the call comes" that able-bodied members of the unregulated Militia may assemble, armed with military-type weapons and trained to use them. He reiterated the Plaintiffs' position that this armed readiness is crucial to avoid or repel tyranny.

Katz, the sole defendant who objects to the Plaintiffs' petition, defends on several grounds. Katz asserts that the requested injunction is impermissibly overbroad; that as a facial challenge it fails because portions of the assailed legislation are "plainly constitutional". These objections were at least attempted to be met in the reply brief filed on behalf of the Plaintiffs.

Katz also contests the larger proposition that Sec. 13 creates as individual rights to possess the civilian analogues of military weapons. In support of his position, Katz argues that Sec. 13 is not "self executing"; it creates a "structural guarantee" implemented through law. Katz points to the military law of Virginia and the tiered scheme of organization and regulation of the Virginia military created therein.

> Virginia law confirms that militia authority is implemented through public law, not private choice. The Code defines the militia, divides it into the national Guard, the Virginia Defense Force, and the unorganized militia, and provides that the unorganized militia consists of the remaining able-bodied persons within the statutory class. *See* Va. Code §§ 44-1, 44-4. Those provisions identify who belongs to the militia pool; they do not create a roving private right to acquire military-style arms. Other provisions make clear who controls the militia and how it is used. The Governor is Commander-in-Chief of the Commonwealth's armed forces, with authority to employ them to repel invasion, suppress insurrection, and enforce the laws. *Id.* § 44-8. The Governor also prescribes regulation for the organization of the Commonwealth's armed forces. *Id.* § 44-9. When the militia is called forth, the Governor issues orders and takes measures for its procurement, transportation, equipment, and support. *Id.* § 44-76. And the National Guard, Virginia Defense Force, and unorganized militia may be ordered into service "by the Governor in such order as he determines." *Id.* § 44-80. The Code is equally specific about arms. The Virginia Defense Force, an organized component of the militia, is "equipped as needed" only "to the extent authorized by the Governor and funded by the General Assembly," and its members "shall not be armed with firearms during the performance of training duty or state active duty, except under circumstances and in instances authorized by the Governor." *Id.* § 44-54.12. And arms furnished to militia commands are "deposited in the armories or headquarters of such commands for safekeeping," confirming that government-furnished arms are treated as command property subject to public custody and control. *Id.* § 44-103.

Katz points to cases which have rejected the proposition that the duty to serve in the militia creates an individual right to possess military-style weapons. While these cases and those from other Federal Circuits reaching the same result are not interpretations of Sec. 13, the

distinction between a duty to serve and an individual right is offered as an instructive response to Plaintiffs individual rights theory.

Katz argues that the statutes are permissible under the Second Amendment, agreeing that Virginia has made the individual right clause of Sec. 13 "coextensive" with the Second Amendment, and further arguing that the statutes are permissible under Heller and Bruen.

Katz finally argues that the balancing of interests required in Rule 3:26 distinctly favors the Commonwealth:

> The Commonwealth's interests, by contrast, are concrete and substantial. SB749 reflects the General Assembly's judgment that assault firearms and large-capacity magazines pose distinctive public-safety risks, and the record supports that judgment. These weapons and magazines drive higher casualties, more rounds fired, and greater lethality in mass-casualty events; magazines over 15 rounds are rarely needed for lawful self-defense; and American governments have long regulated weapons and accessories that create special public-safety risks. That tradition includes laws responding to concealable weapons used in murders and assaults in the early nineteenth century, as well as modern laws addressing technologies that can enable mass-casualty violence. Ex. ¶¶ 23-24, 56-59 (Roth).
>
> Enjoining SB749 would frustrate that public-safety judgment before final adjudication. It would also inflict a separate institutional injury. "Any time a State is enjoined by a court from effectuation statutes enacted by representatives of its people, it suffers a form of irreparable injury." *Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers). That principle carries particular force here, where the challenged statute is presumptively constitutional and Plaintiffs seek facial, statewide, non-party relief on a preliminary record. *See Montgomery Cnty.*, 282 Va. at 435.

Plaintiffs' reply in opposition to Katz sought to narrow the relief demanded; they suggest that the Court enjoin only the prohibitions in the Firearms Ban which apply to "a defined class of militia standard arms." Plaintiffs offer this in response to Katz's argument that Plaintiffs seek relief for nonparties.

Plaintiffs then spent significant effort demonstrating that there is much agreement between the parties' witnesses regarding the nature of the prohibited weapons as the civilian analogue of basic military weapons.

Ruling

Much effort has been poured into this important litigation in an extremely short period of time. The enactment of the Assault Weapons Ban statutes was followed within days by the filing of the present litigation on May 19, 2026. Twenty-nine days later, after the filing of more than two thousand pages of documents and the summarized testimony of numerous witnesses the matter came before the Court for argument on the demand for a Preliminary Injunction. This timing has been driven by the impending July 1, 2026 effective date of the Ban. The Court felt an obligation to hear argument and decide on the Preliminary Injunction prior to that date.

The Court heard four hours of oral argument on June 17, 2026. The Court has reviewed the testimony provided in conjunction with the pleadings in this case, and considered the relevant Virginia and Federal statutes and caselaw.

Following the rubric created in Va. Supreme Court Rule 3:26, the Court finds as follows:

Pursuant to Rule 3:26 (c) the Court finds that the Plaintiffs have established the likelihood of irreparable harm if the Ban becomes effective and is later determined to be unconstitutional. This analysis precedes any of the other required considerations of Rule 3:26.

Rule 3:26 (d) then requires the Court to determine whether the movant (here the Plaintiffs) has asserted a legally viable claim based on credible facts (not mere allegations) demonstrating that the underlying claim will more likely than not succeed on the merits.

Here the Court cannot, at this point, make this finding. The Court is currently persuaded that both the history and practice surrounding Sec. 13 establish no individual right to possess military style weapons by members of the unorganized militia.

Rule 3:26 (d) ii directs the Court to consider the balance of hardships to the parties. Here, although the Court concedes the harm alleged by the Plaintiffs is definitionally irreparable, it does not outweigh the potential harm to the Commonwealth. As discussed above, the Virginia legislature, elected by the people, and the Governor, also elected, enacted the Ban to promote public safety. Preventing its implementation, even for a short period creates a risk of harm greater than that posed to the Plaintiffs.

Rule 3:26 (d) iii requires the Court to ascertain whether the public interest supports the issuance of the preliminary injunction. It does not. For the same reasons addressed above, the public is entitled to the implementation of the laws their representatives create and the Governor approves. If the law is struck down at a later date, the balance between the legislature and judiciary is maintained; to enjoin the legislation preliminarily is not, at least on these facts, in the public interest.

Therefore, the Motion for Preliminary Injunction is denied. This matter will continue on the Court's docket for additional proceedings as the parties require.

The Court observes, but does not yet rule, that the Plaintiffs' claims against Ryan Mehaffey and Sheriff Harris may not be capable of continuing under the definition of "cases of actual controversy" in Va. Code Sec. 8.01-184. Counsel are directed to review that issue and determine whether it should be brought before this Court for resolution.

Finally, Counsel for Katz are directed to prepare an order consistent with and incorporating by reference the decision articulated herein with respect to the Petition for Preliminary Injunction. That Order shall be circulated for objections and endorsement and presented to the Court for entry no later than Monday, June 22, 2026.

Sincerely,

William E. Glover, Judge

cc: Clerk of the Court