

**VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF WINCHESTER**

**PATRICK HYLAND**

**and**

**MARK STICKLEY**

**PLAINTIFFS,**

**v.**

**CASE NO. \_\_\_\_\_**

**THE CITY OF WINCHESTER**

**and**

**AMANDA BEHAN,  
In Her Official Capacity as Chief of Police  
Winchester Police Department  
Timbrook Public Safety Center  
231 East Piccadilly Street  
Winchester, VA 22601,**

**DEFENDANTS.**

**COMPLAINT FOR DECLARATORY RELIEF AND  
APPLICATION FOR TEMPORARY AND PERMANENT INJUNCTION**

COME NOW the Plaintiffs, by counsel, and move this Honorable Court for:

(1) a declaratory judgment finding that the provisions of Winchester City Code § 16-34(c)(1) (prohibition of firearms in city parking garages) are violative of Article I, § 13 of the Constitution of Virginia (right to keep and bear arms);

(2) immediate entry of a temporary injunction enjoining the Chief of Police and all other law enforcement divisions, officers, agencies, and agents from enforcing the prohibition contained in Winchester City Code § 16-34(c)(1);

(3) issuance of a permanent injunction enjoining the administration, enforcement, and imposition of the prohibition contained in Winchester City Code § 16-34(c)(1); and

(4) such other relief as the Court may deem appropriate, and in support thereof state as follows:

## **JURISDICTION AND VENUE**

- 1) This Court has jurisdiction to grant the relief sought pursuant to Va. Code § 17.1-513, § 8.01-184, § 8.01-620, and § 8.01-645.
- 2) 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.

## **PARTIES**

- 3) Plaintiff PATRICK HYLAND is natural person, a United States citizen, and a resident of Frederick County, Virginia. He is a law-abiding citizen, is eligible to possess firearms under Virginia and federal law, and has a valid Virginia Concealed Handgun Permit (CHP). Plaintiff Hyland has been teaching NRA basic pistol classes for over 50 years. Plaintiff Hyland is not an employee of the City of Winchester.
- 4) Plaintiff MARK STICKLEY is natural person, a United States citizen, and a resident of Winchester, Virginia. He is a law-abiding citizen, is eligible to possess firearms under Virginia and federal law, and has a valid Virginia Concealed Handgun Permit (CHP). Plaintiff Stickley is not an employee of the City of Winchester.
- 5) Defendant City of Winchester is an independent city organized under the Constitution and laws of the Commonwealth of Virginia.

- 6) Defendant Amanda Behan is the Chief of Police for the City of Winchester, Virginia, and is responsible for oversight and enforcement of § 16-34(c)(1) of the Code of the City of Winchester. She is being sued in her official capacity.

**CONSTITUTIONAL AND STATUTORY BACKGROUND**

- 7) The Virginia Constitution, Article I, Section 13 provides, in relevant part:

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....

- 8) There is no Virginia statute which prohibits a person from openly carrying a firearm generally.
- 9) In Virginia, a person is prohibited from carrying a concealed handgun in public unless that person is issued a Concealed Handgun Permit (CHP) under Virginia Code § 18.2-308.
- 10) Virginia, like many other states, has what is known as a “preemption” statute, found at Virginia Code § 15.2-915, which generally prevents localities from creating a patchwork of gun laws across the Commonwealth that are difficult and burdensome for otherwise law-abiding gun owners to navigate.
- 11) Beginning July 1, 2020, and pursuant to an amendment to Virginia’s preemption statute found at § 15.2-915(E) and attached as Exhibit “A,”

the General Assembly has delegated localities the authority to regulate the “possession, carrying, or transportation of any firearms, ammunition, or components or combination thereof”:

(i) in any building, or part thereof, owned or used by such locality, or by any authority or local governmental entity created or controlled by the locality, for governmental purposes; (ii) in any public park owned or operated by the locality, or by any authority or local governmental entity created or controlled by the locality; (iii) in any recreation or community center facility operated by the locality, or by any authority or local governmental entity created or controlled by the locality; or (iv) in any public street, road, alley, or sidewalk or public right-of-way or any other place of whatever nature that is open to the public and is being used by or is adjacent to a permitted event or an event that would otherwise require a permit. In buildings that are not owned by a locality, or by any authority or local governmental entity created or controlled by the locality, such ordinance shall apply only to the part of the building that is being used for a governmental purpose and when such building, or part thereof, is being used for a governmental purpose. [Va. Code § 15.2-915(E).]

- 12) Since enactment of this statute, several Virginia jurisdictions have chosen to regulate firearms, firearm components, and ammunition in some, or all, of the above-identified locations. As of this filing and to Plaintiffs’ knowledge, some form of restrictions allowed by § 15.2-915(E) have been implemented in Alexandria, Arlington, Blacksburg, Charlottesville, Fairfax (city and county), Falls Church, Loudoun, Newport News, Petersburg, Richmond, Roanoke, and Winchester.
- 13) The Winchester Ordinance, attached as Exhibit “B,” reads as follows, with the challenged provision underlined and in bold:

Sec. 16-34. - Possession of firearms in certain public places prohibited.

(a) *Firearm* shall mean any weapon that will, is designed to, or may be readily converted to expel a single or multiple projectiles or ammunitions by the action of an explosion of a combustible, provided that stud nailing guns, rivet guns, and similar construction equipment, neither designed nor intended as weapons, shall not be deemed firearms.

(b) *Ammunition* shall mean the combination of a cartridge, pellet, ball, missile, projectile, primer, or propellant designed or adapted for use in a firearm.

(c) It shall be unlawful for any person to possess, carry, or transport a firearm, ammunition, components or combination thereof in any of the following locations:

**(1) Any building, or part thereof, owned or used by the City, or by any authority or local governmental entity created or controlled by the City, for governmental purposes; and**

(2) Any recreation or community center facility operated by the City, or by any authority or local governmental entity created or controlled by the City.

(d) In any buildings that are not owned by the City or by any authority or local governmental entity created or controlled by the City, this Ordinance shall apply only to the part of the building that is being used for a governmental purpose and when such building, or part thereof, is being used for a governmental purpose.

(e) The provisions of this Ordinance shall not apply to the following:

(1) Military personnel acting within the scope of their official duties;

(2) Sworn law-enforcement personnel;

(3) Private security personnel contracted or employed by the City or by any authority or local governmental entity created or controlled by the City when any of them are present in buildings or on property owned, leased, operated, or used by the City;

(4) Museums displaying firearms and the personnel and volunteers of museums or living history re-enactors and interpreters, who possess firearms that are not loaded with projectiles, when such persons are participating in, or traveling to-and-from, historical perspective events that involve the display or demonstrations of such firearms;

(5) A Senior Reserve Officers' Training Corps (SROTC) program operated at a public or private institution of higher education in accordance with the provisions of 10 U.S.C. § 2101 et seq., or any intercollegiate athletics program operated by a public or private institution of higher education and governed by the National Collegiate Athletic Association or any club sports team recognized by a public or private institution of higher education where the sport engaged in by such program or team involves the use of a firearm. Such activities shall follow strict guidelines developed by such institutions for these activities and shall be conducted under the supervision of staff officials of such institutions; and

(6) City employees who lawfully possess a firearm or ammunition that is stored out of sight in a locked private vehicle lawfully parked on City property.

(f) The City may implement security measures that are designed to reasonably prevent the unauthorized access of such locations outlined within this section by a person with any firearms, ammunition, or components or combination thereof, including, without limitation, the use of metal detectors and increased use of security personnel.

(g) Notice of the restrictions provided within this Ordinance shall be posted at all applicable locations in accordance with §15.2-915(F) of the Virginia Code.

(h) A person found to violate any subsection of Sec. 16-34(c) or (d) shall be guilty of a Class 1 misdemeanor.

- 14) These enactments have created a patchwork of laws where most localities have no local firearm carry restrictions, some have adopted restrictions in every area authorized by § 15.2-915(E), and others have adopted only some of the restrictions authorized by the amendment, all with varying penalties. For example, Newport News Code § 43-3 restricts firearms in almost every area authorized by § 15.2-915(E), punishes violations via civil fine of \$500 only, and specifically exempts valid CHP holders. In contrast, Petersburg City Code § 74-213 adopts all restrictions authorized by statute, punishes violations as a class 1 misdemeanor, and does not exempt CHP holders.
- 15) On February 9, 2021, after discussion and public comment, the Winchester City Council adopted Winchester City Ordinance § 16-34 restricting firearms, ammunition, and firearm or ammunition components in every available area authorized by Virginia Code § 15.2-915(E), using language that mirrors that of § 15.2-915(E), and with no exception for CHP holders. During the public comment portion, 18 people spoke against the Ordinance, while only one person spoke in favor. Additionally, prior to the City Council meeting where the proposed Ordinance was discussed, 119 people contacted the City Council about



the proposed Ordinance, with only 39 of them in favor of its passing.

Nonetheless, the Ordinance passed on a 7-2 party-line vote.<sup>1</sup>

- 16) Following enactment of Winchester City Ordinance § 16-34, a number of individuals and public-interest organizations sued the City, challenging several of the Ordinance’s restrictions under the Virginia Constitution.
- 17) On September 27, 2022, the Circuit Court for the City of Winchester granted the plaintiffs a preliminary injunction as to Winchester’s ban on firearms in parks and permitted and unpermitted events. *See Stickley v. City of Winchester*, 110 Va. Cir. 300 (Winchester 2022). The *Stickley* court ruled that these provisions violated the individual right to bear arms in public as protected by Article I, § 13 of the Virginia Constitution.
- 18) In response to the injunction, the City amended its Ordinance, repealing those provisions that had been enjoined. *See Winchester City Ordinance No. O-2022-36* (Nov. 9, 2022). However, the prohibition of firearms in “[a]ny building, or part thereof, owned or used by the City ... for governmental purposes,” which includes City parking garages, remained, as the *Stickley* plaintiffs had not challenged that subsection.

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<sup>1</sup> Brian Brehm, *Winchester Bans Guns at City-Owned Properties, Events*, Winchester Star (Feb. 11, 2021), <https://tinyurl.com/5vzwkkkd>.

- 19) Winchester has added “no guns” signs outside of City-owned parking garages, announcing the location as off-limits for firearms.
- 20) A violation of Winchester City Code § 16-34 constitutes a Class 1 misdemeanor punishable by up to 1 year’s imprisonment or a fine of up to \$2,500, or both. Winchester City Code § 1-11(a)(1).
- 21) There are several exceptions to the firearm prohibition in Winchester City Code § 16-34, most notably “City employees who lawfully possess a firearm or ammunition that is stored out of sight in a locked private vehicle lawfully parked on City property”—but not non-employees. Winchester City Code § 16-34(e)(6).

### **FACTUAL ALLEGATIONS**

- 22) The City of Winchester owns and maintains the Braddock Autopark, located at 30 North Braddock Street, Winchester, VA, 22601; the Court Square Autopark, located at 2 South Cameron Street, Winchester, VA, 22601; the George Washington Autopark, located at 128 North Cameron Street, Winchester, VA 22601; and the Loudoun Autopark located at 50 East Fairfax Lane, Winchester, VA 22601.

- 23) Furthermore, at least one Winchester Parking Garage, the George Washington Autopark, also contains government-used space in the form of the Parking Authority Offices and conference space.
- 24) Plaintiffs Hyland and Stickley frequently park in the various parking garages owned and operated by the City of Winchester, including the “Braddock Autopark,” “Court Square Autopark,” “George Washington Autopark,” and “Loudoun Autopark.” (See attached Affidavit of Patrick Hyland; Affidavit of Mark Stickley.)
- 25) Prior to enactment of the Winchester Ordinance, Plaintiffs Hyland and Stickley were able to possess a firearm while parking in these garages.
- 26) Plaintiffs Hyland and Stickley regularly carry firearms to defend themselves in public and wish to do so in parking garages in Winchester. Plaintiffs Hyland and Stickley perceive that they are vulnerable when coming to and from their vehicles parked in Winchester Autoparks. Indeed, past violent crimes have occurred at and near Winchester parking garages.<sup>2</sup>
- 27) But for the Ordinance’s firearm prohibition, Plaintiffs Hyland and Stickley would continue carrying their firearms into and out of these

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<sup>2</sup> Evan Goodenow, *Man Wounded in Machete Attack Outside Autopark*, Winchester Star (Mar. 18, 2022), <http://tinvurl.com/4f9bjfkb>.

parking garages. However, they currently fear criminal prosecution under the Ordinance, should they exercise their Article I, § 13 right to bear arms in parking garages, which are nonsensitive public places.

- 28) Plaintiffs need not wait for an actual arrest or to be prosecuted to challenge the Winchester Ordinance. Rather, “[w]hen an individual is subject to such a threat, an actual arrest, prosecution, or other enforcement action is not a prerequisite to challenging the law.” *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014); *see also MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 128-29 (2007) (observing that, “where threatened action by government is concerned, we do not require a plaintiff to expose himself to liability before bringing suit to challenge the basis for the threat”); *Steffel v. Thompson*, 415 U.S. 452, 459 (1974) (same); *Black v. Commonwealth*, 262 Va. 764, 777-78 (2001), *aff’d in part, Virginia v. Black*, 538 U.S. 343 (2003) (“Threat of prosecution under a criminal statute ‘tends to chill the exercise of [constitutional] rights.’” (quoting *N.C. Right to Life, Inc. v. Bartlett*, 168 F.3d 705, 710 (4th Cir. 1999))).
- 29) Due to the Ordinance’s enactment by the Winchester City Council and its enforcement by Defendant Behan, Plaintiffs are threatened with criminal prosecution and imprisonment for exercising their constitutional

rights. Absent a remedy from this Court, Plaintiffs will suffer irreparable harm and have no adequate remedy at law.

**COUNT I**  
**(Article I, § 13, Virginia Constitution,**  
**Right to Keep and Bear Arms)**

- 30) Paragraphs 1 through 29 are realleged in full and hereby incorporated by reference.
- 31) Article I, § 13 of the Virginia Constitution provides “[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....”
- 32) This text incorporates the operative clause<sup>3</sup> of the federal Second Amendment, which was added to Article I, § 13 in 1971. However, Virginians did not gain any new rights as a result of this effort to modernize the Virginia Constitution over 50 years ago.
- 33) Rather, protection of the natural, individual right to self-defense is not an act of legislative grace; the right exists with or without its documentary recognition and therefore *pre-exists* any constitution. *See,*

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<sup>3</sup> “[T]he right of the people to keep and bear Arms, shall not be infringed.” U.S. Const. amend. II.

*e.g.*, *District of Columbia v. Heller*, 554 U.S. 570, 592 (2008) (noting that “it has always been widely understood that the Second Amendment, like the First and Fourth Amendments, codified a *pre-existing* right”); *see also United States v. Cruikshank*, 92 U.S. 542, 553 (1876) (“Neither is it in any manner dependent upon that instrument for its existence.”).

34) In other words, Article I, § 13 is the Commonwealth’s recognition of a pre-existing right with which Virginians were endowed by their Creator, and it operates as a fixed limitation on the power of state or local government to enact legislation affecting firearms. Accordingly, Article I, § 13 operates as the Commonwealth’s highest “preemption” law, independent of any provision of Virginia Code § 15.2-915.

35) As the 1969 Virginia Commission on Constitutional Revision recognized:

most of the provisions of the Virginia Bill of Rights hav[ing] 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* at 86 (1969); *see also Richmond Newspapers, Inc. v. Commonwealth*, 222 Va. 574 (1981).]

36) Consequently, Article I, § 13 provides an independent basis for the protection of individual rights without the need to resort to federal law.

Indeed, Article I, § 13 may provide even stronger protection than the U.S. Constitution but, at a minimum, protects rights on a coextensive basis.

- 37) Thus, federal law remains highly instructive, as Article I, § 13’s protections are at least coextensive with the federal Second Amendment’s protections. *DiGiacinto v. Rector & Visitors of George Mason Univ.*, 281 Va. 127, 134 (2011); *Stickley v. City of Winchester*, 110 Va. Cir. 300, 314 (Winchester 2022); *Elhert v. Settle*, 105 Va. Cir. 326, 330 (Lynchburg 2020) (“No party disputes that *Heller* and *McDonald* should provide the framework for analyzing the present case. Based on the quality of analysis in both cases and the absence of disagreement from the parties, the Court finds *Heller* and *McDonald* to be highly persuasive in evaluating Virginia’s constitutional right to keep and bear arms.”).
- 38) Indeed, based on the textual similarity between Article I, § 13 and the Second Amendment’s operative clause, the 1971 General Assembly’s well-documented legislative intent in amending Article I, § 13, and the federal incorporation doctrine and Supremacy Clause, Article I, § 13 “cannot provide fewer rights than the rights inherent under the Second Amendment.” *Stickley*, 110 Va. Cir. at 316, 317.

39) The 1969 floor debates from the House of Delegates and Senate make clear that the legislature “desired to align Article I, Section 13, with the Second Amendment.” *Stickley*, 110 Va. Cir. at 312. Several excerpts and exchanges from the floor debates evince this understanding:

**Delegate Harrell:** This merely puts into the Constitution of Virginia what is in the Constitution of the United States, to which, of course, we are all subject. Certainly our Constitution could not be in derogation of the federal Constitution....

...

**Senator Bateman:** Senator Barnes, it is the intent or purpose of this amendment to do anything other than what is done or protected by the safeguards of the second amendment to the Constitution of the United States?

**Senator Barnes:** No, Sir, the purpose is identical.

**Senator Bateman:** And the purpose only to guarantee that which is already guaranteed there?

**Senator Barnes:** That is right....

[*Stickley*, 110 Va. Cir. at 312-13.]

40) Article I, § 13 is not the only Virginia constitutional provision that has been held coextensive with its federal counterpart. *See, e.g., Willis v. Mullett*, 263 Va. 653, 657 (2002) (due process under Article I, § 11); *Elliott v. Commonwealth*, 267 Va. 464, 473-74 (2004) (free speech under Article I, § 12).

41) Consistent with Virginia courts’ analyses of other constitutional provisions, when a protection under the Virginia Declaration of Rights is coextensive with a federal constitutional right, Virginia courts often will apply the federal standard of review to the Virginia constitutional claim.



*See Shivaee v. Commonwealth*, 270 Va. 112, 119 (2005) (“Because the due process protections afforded under the Constitution of Virginia are co-extensive with those of the federal constitution, the same analysis will apply to both.”); *Vlaming v. W. Point Sch. Bd.*, 480 F. Supp. 3d 711, 721 (E.D. Va. 2020) (citation omitted) (“[C]ourts apply the same analysis to both federal and Virginia constitutional claims even though the claims ‘arise under different sources of constitutional law.’ Accordingly, courts may look to federal constitutional law when deciding Virginia constitutional claims.”).

- 42) Consequently, although Plaintiffs do not bring any claims under the Second Amendment or under any other provision of the U.S. Constitution or federal law, discussion of Second Amendment authorities is appropriate because “the Court cannot examine Article I, Section 13, of the Constitution of Virginia, and the constitutionality of [the challenged ordinance] in a vacuum.” *Stickley*, 110 Va. Cir. at 318; *see also Lynchburg Range & Training v. Northam*, 455 F. Supp. 3d 238, 248 (W.D. Va. 2020) (no removal jurisdiction for an Article I, § 13 challenge).
- 43) Notably, this very Circuit Court—the *Stickley* court—has already performed an extensive analysis of Article I, § 13, its appropriate

standard of review, and its application to firearm prohibitions in parks and events<sup>4</sup> passed by the City of Winchester pursuant to Virginia Code § 15.2-915(E). *See also Elhert*, 105 Va. Cir. at 329 (another court performing an extensive analysis and concluding “Article I, § 13 should be interpreted with a history-and-tradition framework”).

- 44) In granting a preliminary injunction against the Winchester Ordinance sections prohibiting firearms in city parks and at public events, the *Stickley* court held that 1) Article I, § 13 is at least coextensive with the Second Amendment based on its text and history; 2) the Second Amendment’s text-based standard of review applies to Article I, § 13 challenges; and 3) under that standard of review, a prohibition of firearms in public places like parks and events is unconstitutional. *Stickley*, 110 Va. Cir. at 318, 320, 325.
- 45) The coextensive constitutional standard of review for Article I, § 13 challenges is that explained in *District of Columbia v. Heller*, 554 U.S. 570 (2008), as reiterated and elaborated by *N.Y. State Rifle & Pistol Ass’n v. Bruen*, 142 S. Ct. 2111 (2022). *Stickley*, 110 Va. Cir. at 320.

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<sup>4</sup> *See* Winchester City Ordinance No. O-2021-1 (Feb. 9, 2021) (prohibiting firearms in all locations authorized by Virginia Code § 15.2-915(E)), *repealed by* Winchester City Ordinance No. O-2022-36 (Nov. 9, 2022), *following grant of preliminary injunction in Stickley v. City of Winchester*, 110 Va. Cir. 300 (Winchester 2022).

- 46) Beginning with *Heller*'s analysis, the Supreme Court has consistently and "expressly rejected the application of any 'judge-empowering "interest-balancing inquiry" that "asks whether the statute burdens a protected interest in a way or to an extent that is out of proportion to the statute's salutary effects upon other important governmental interests,"" when it comes to the pre-existing right to keep and bear arms. *Bruen*, 142 S. Ct. at 2129; *see also McDonald v. City of Chicago*, 561 U.S. 742 (2010); *Caetano v. Massachusetts*, 577 U.S. 411 (2016) (per curiam).
- 47) This categorical rejection of judicial interest balancing reflects the Framers' understanding that the pre-existing right to keep and bear arms "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*, 142 S. Ct. at 2131.
- Indeed,
- [t]he 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. A constitutional guarantee subject to future judges' assessments of its usefulness is no constitutional guarantee at all. [*Heller*, 554 U.S. at 634.]
- 48) At bottom, the *Bruen* test "requires courts to assess whether modern firearms regulations are consistent with the ... text and historical

understanding” of the enumerated right to keep and bear arms. *Bruen*, 142 S. Ct. at 2131.

- 49) Under this constitutional test, when the Constitution’s “plain text covers an individual’s conduct, the Constitution presumptively protects that conduct. The government must then justify its regulation by demonstrating that it is consistent with the Nation’s historical tradition of firearm regulation. Only then may a court conclude that the individual’s conduct falls outside the Second Amendment’s [and Article I, § 13’s] ‘unqualified command.’” *Bruen*, 142 S. Ct. at 2129-30.
- 50) In other words, if Plaintiffs’ “proposed course of conduct” falls within the plain meaning of Article I, § 13’s text, such conduct is *presumed* protected and the Winchester Ordinance is *presumed* unconstitutional unless Defendants carry their burden of proving otherwise. *Bruen*, 142 S. Ct. at 2134.
- 51) Indeed, Article I, § 13’s absolutist language contains no limitation or qualification constraining who may exercise the right to be armed—or where.
- 52) Accordingly, the right presumptively belongs to all “the people,” presumptively protects “all instruments that constitute bearable arms,” presumptively covers all “lawful purposes,” and presumptively extends

to all locations. *Heller*, 554 U.S. at 581, 582, 624; *Bruen*, 142 S. Ct. at 2134-35 (“To confine the right to ‘bear’ arms to the home would nullify half of the Second Amendment’s operative protections.”).

- 53) Only if Defendants can conclusively demonstrate via historical tradition that the Framers never considered certain persons, arms, or activities to be within the protections of Article I, § 13 can a court conclude that Plaintiffs’ “conduct falls outside [Article I, § 13’s] ‘unqualified command.’” *Bruen*, 142 S. Ct. at 2126.
- 54) Otherwise, that which Article I, § 13 protects, it protects absolutely.
- 55) A number of courts already have analyzed the operative constitutional text such that Plaintiffs, along with their activities outlined above, clearly enjoy a presumption of constitutional protection. For example, there is no question that “ordinary, law-abiding, adult citizens ... are part of ‘the people’” under the amendment’s plain text. *Bruen*, 142 S. Ct. at 2134. Further, there is no question that Plaintiffs’ proposed course of conduct—carrying commonly owned handguns in public for personal protection—falls squarely within the right to “bear arms.” *Id.* (“Th[e] definition of ‘bear’ naturally encompasses public carry.”). And finally, Plaintiffs’ “arms”—handguns—undoubtedly qualify, as Article I, § 13 “extends, *prima facie*, to all instruments that constitute bearable arms, even those

that were not in existence at the time of the founding.” *Heller*, 554 U.S. at 582; *see also Bruen*, 142 S. Ct. at 2134 (“Nor does any party dispute that handguns are weapons ‘in common use’ today for self-defense.”).

- 56) Consequently, and to reiterate, Defendants bear the heavy burden of proving that the Winchester Ordinance’s prohibition on firearms in public parking garages “is consistent with the Nation’s historical tradition of firearm regulation.” *Bruen*, 142 S. Ct. at 2130. They cannot.
- 57) When conducting this Article I, § 13 historical analysis, a number of methodological precepts bear emphasis. First, “when it comes to interpreting the Constitution, not all history is created equal.” *Bruen*, 142 S. Ct. at 2136. “Constitutional rights are enshrined with the scope they were understood to have *when the people adopted them.*” *Id.*
- Accordingly, only historical evidence contemporaneous with the Founding era is relevant in elucidating the scope of the right Article I, § 13’s Framers protected. *See id.* at 2136 (“[W]e must ... guard against giving postenactment history more weight than it can rightly bear.”); *id.* at 2137 (“[T]o the extent later history contradicts what the text says, the text controls.”); *id.* (“[P]ostratification adoption or acceptance of laws that are *inconsistent* with the original meaning of the constitutional text obviously cannot overcome or alter that text.”); *id.* (“[B]ecause post-Civil

War discussions of the right to keep and bear arms ‘took place 75 years after the ratification of the Second Amendment, they do not provide as much insight into its original meaning as earlier sources.’”); *id.* (treating 19th-century evidence “as mere confirmation of what the Court thought had already been established”); *id.* (“[W]e have generally assumed that the scope of the protection applicable to the Federal Government and States is pegged to the public understanding of the right when the Bill of Rights was adopted in 1791.”); *id.* at 2154 n.28 (“We will not address any of the 20th-century historical evidence brought to bear.... As with ... late-19th-century evidence, the 20th-century evidence ... does not provide insight into the meaning of the Second Amendment when it contradicts earlier evidence.”); *see also* *Espinoza v. Mont. Dep’t of Revenue*, 140 S. Ct. 2246, 2258-59 (2020) (rejecting examples of 19th century-era laws even from “more than 30 States” as failing to “establish an early American tradition”).

- 58) In other words, pre- and post-enactment historical evidence can only serve a confirmatory role and cannot establish a tradition that never otherwise existed at the Founding.
- 59) Moreover, the fact that Article I, § 13 was amended in 1971 to include the Second Amendment’s operative clause is inapposite and does

not change the relevant time period for historical inquiry. *See Stickley*, 110 Va. Cir. at 322 (already rejecting the argument that courts should “consider[] the historical tradition as it existed when the General Assembly amended Article I, Section 13”). As discussed *supra*, the General Assembly’s “purpose [was] only to guarantee that which [wa]s already guaranteed [in the Second Amendment],” *id.* at 313, and the Second Amendment guarantees a “pre-existing” right that is immune to post-enactment contradictions. *Heller*, 554 U.S. at 592; *Bruen*, 142 S. Ct. at 2136.

60) Second, it is Defendants’ burden—and theirs alone—to affirmatively prove that their modern regulation comports with the original public understanding of the Article I, § 13 right. *Bruen*, 142 S. Ct. at 2150 (“Of course, we are not obliged to sift the historical materials for evidence to sustain [the] statute. That is respondents’ burden.”). If Defendants fail to prove a broad and enduring historical tradition justifying the Winchester Ordinance, Plaintiffs are entitled to injunctive relief. *See id.* at 2130 (emphasis added) (announcing that “*only*” when the government carries its burden “may a court conclude that the individual’s conduct falls outside the Second Amendment’s ‘unqualified command’”).



- 61) Third, in proffering historical evidence, Defendants must establish a widespread Founding-era tradition. *Bruen*, 142 S. Ct. at 2130 (emphasis added) (contemplating a “historical *tradition* of firearm regulation”); *id.* at 2133 (requiring “well-established and representative” history); *id.* at 2153 (rejecting historical evidence from several states as “outliers”). While the *Bruen* Court did not articulate just how much historical evidence constitutes a “tradition,” this Court need not address that question because there is *no* relevant evidence to support the Winchester Ordinance.
- 62) Fourth, Defendants’ historical evidence must have similar “how” and “why” metrics to the Winchester Ordinance (i.e., Founding-era laws that prohibited firearms in government-provided horse stables but exempted public employees). *Bruen*, 142 S. Ct. at 2133 (analogous historical laws must be “relevantly similar”). In other words, the mechanisms and motivations underlying these historical laws must align with those of the Winchester Ordinance.
- 63) Fifth, Defendants cannot escape their burden by invoking the so-called constitutional “sensitive places” doctrine, which provides the “relatively few” places where the government may constitutionally prohibit firearms in accordance with historical tradition. *Bruen*, 142 S.

Ct. at 2133. Indeed, “expanding the category of ‘sensitive places’ simply to all places of public congregation that are not isolated from law enforcement defines the category of ‘sensitive places’ far too broadly.” *Id.* at 2134. Rather, courts have construed “sensitive places” narrowly as “civic locations sporadically visited in general,” which are “typically secured locations, where uniform lack of firearms is generally a condition of entry, ... *where government officials are present and vulnerable to attack,*” and where “*a bad-intentioned armed person could disrupt key functions of democracy.*” *Hardaway v. Nigrelli*, No. 22-CV-771 (JLS), 2022 U.S. Dist. LEXIS 200813, at \*34 (W.D.N.Y. Nov. 3, 2022). A public place is not “sensitive” under Article I, § 13 simply because it is a place “where people typically congregate and where law-enforcement and other public-safety professionals are presumptively available.” *Bruen*, 142 S. Ct. at 2133.

- 64) Rather, a public place is “sensitive” only if disarmament in that location comports with early American history and tradition. It is not enough simply to declare a place sensitive; *Bruen*’s historical framework contains no exceptions and must be applied in all cases. 142 S. Ct. at 2129-30 (emphases added) (“The government *must* then justify its regulation by demonstrating that it is consistent with the Nation’s

historical tradition of firearm regulation. *Only then* may a court conclude that the individual's conduct falls outside the Second Amendment's 'unqualified command.'").

- 65) The *Stickley* court concluded as much when it rejected the argument that public parks and permitted and unpermitted events might be "sensitive places":

The "sensitive places" outlined in ... cases are confined, mostly enclosed areas, where individuals congregate and government business takes place. Even the Virginia Supreme Court noted a distinction between a public street or park and the school buildings at George Mason University.... [*Stickley*, 110 Va. Cir. at 325 (emphasis added) (citation omitted).]

- 66) All told, because the Winchester Ordinance prohibits Plaintiffs Hyland and Stickley from carrying firearms into public parking garages, which are not historical "sensitive places," the Ordinance is presumptively unconstitutional under Article I, § 13.

- 67) And, because there is no historical tradition of analogous regulation at the Founding, Defendants cannot carry their burden.

- 68) Indeed, several federal courts already have heard challenges to firearm prohibitions in parking areas post-*Bruen*, striking these prohibitions as inconsistent with historical tradition. See, e.g., *May v. Bonta*, Nos. SACV 23-01696-CJC (ADSx), SACV 23-01798-CJC (ADSx), slip op. at

38 (C.D. Cal. Dec. 20, 2023) (“SB2’s designation of parking areas as sensitive places is inconsistent with the Second Amendment.”);<sup>5</sup> *Wolford v. Lopez*, 2023 U.S. Dist. LEXIS 138190, at \*4 (D. Haw. Aug. 8, 2023) (enjoining Hawaii’s prohibition on firearms in publicly owned or used parking lots “which share the parking area with non-governmental entities, are not reserved for State or county employees, or do not exclusively serve the State or county building”); *see also Koons v. Platkin*, 2023 U.S. Dist. LEXIS 85235, at \*167 (D.N.J. May 16, 2023) (rejecting the governmental defendants’ “government-as-proprietor theory” as failing to exempt publicly owned locations from historical analysis).

69) Accordingly, Winchester City Code § 16-34(c)(1) violates Article I, § 13 as it relates to public parking garages.

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<sup>5</sup> <http://tinvurl.com/yd48fwdd>.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray that the Court:

- 1) Render a declaratory judgment that the challenged provisions of Winchester City Code § 16-34(c)(1) are unconstitutional for violating Article I, § 13 of the Virginia Constitution, insofar as they prohibit firearms in public parking garages, and therefore are void.
- 2) Enter temporary and then permanent injunctions enjoining the City of Winchester, Chief of Police Amanda Behan, and any agents, officers, employees, or officials of the same, from enforcing Winchester City Code § 16-34(c)(1) as it relates to public parking garages.
- 3) Grant such further relief pursuant to and in accordance with such declaratory judgment, Plaintiffs' costs and attorney fees, and such other and further relief as the Court may deem appropriate.

Respectfully Submitted,

Patrick Hyland and Mark Stickley

BY:



COUNSEL

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**CERTIFICATE OF SERVICE**

In accordance with Va. Code § 8.01-629, the undersigned certifies that, on January 12, 2024, a true and accurate copy of the foregoing Complaint and Application was served upon the following, thereby giving notice of the same:

BY:   
COUNSEL

**VIA FACSIMILE AND PERSONAL SERVICE BY PROCESS SERVER:**

City of Winchester Attorney Melisa G. Michelsen  
Litten & Sipe, LLP  
410 Neff Avenue  
Harrisonburg, VA 22801  
Fax: (540) 437-3053

Chief Amanda Behan  
City of Winchester, Virginia  
Winchester Police Department  
Timbrook Public Safety Center  
231 East Piccadilly Street  
Winchester, VA 22601  
Fax: (540) 542-1314

Dan Hoffman, City Manager  
15 North Cameron Street  
Winchester, VA 22601  
Fax: (540) 722-3409

# EXHIBIT

“A”



Code of Virginia  
Title 15.2. Counties, Cities and Towns  
Chapter 9. General Powers of Local Governments

### **§ 15.2-915. Control of firearms; applicability to authorities and local governmental agencies.**

A. No locality shall adopt or enforce any ordinance, resolution, or motion, as permitted by § ~~15.2-1425~~, and no agent of such locality shall take any administrative action, governing the purchase, possession, transfer, ownership, carrying, storage, or transporting of firearms, ammunition, or components or combination thereof other than those expressly authorized by statute. For purposes of this section, a statute that does not refer to firearms, ammunition, or components or combination thereof shall not be construed to provide express authorization.

Nothing in this section shall prohibit a locality from adopting workplace rules relating to terms and conditions of employment of the workforce. However, no locality shall adopt any workplace rule, other than for the purposes of a community services board or behavioral health authority as defined in § ~~37.2-100~~, that prevents an employee of that locality from storing at that locality's workplace a lawfully possessed firearm and ammunition in a locked private motor vehicle. Nothing in this section shall prohibit a law-enforcement officer, as defined in § ~~9.1-101~~, from acting within the scope of his duties.

The provisions of this section applicable to a locality shall also apply to any authority or to a local governmental entity, including a department or agency, but not including any local or regional jail, juvenile detention facility, or state-governed entity, department, or agency.

B. Any local ordinance, resolution, or motion adopted prior to July 1, 2004, governing the purchase, possession, transfer, ownership, carrying, or transporting of firearms, ammunition, or components or combination thereof, other than those expressly authorized by statute, is invalid.

C. In addition to any other relief provided, the court may award reasonable attorney fees, expenses, and court costs to any person, group, or entity that prevails in an action challenging (i) an ordinance, resolution, or motion as being in conflict with this section or (ii) an administrative action taken in bad faith as being in conflict with this section.

D. For purposes of this section, "workplace" means "workplace of the locality."

E. Notwithstanding the provisions of this section, a locality may adopt an ordinance that prohibits the possession, carrying, or transportation of any firearms, ammunition, or components or combination thereof (i) in any building, or part thereof, owned or used by such locality, or by any authority or local governmental entity created or controlled by the locality, for governmental purposes; (ii) in any public park owned or operated by the locality, or by any authority or local governmental entity created or controlled by the locality; (iii) in any recreation or community center facility operated by the locality, or by any authority or local governmental entity created or controlled by the locality; or (iv) in any public street, road, alley, or sidewalk or public right-of-way or any other place of whatever nature that is open to the public and is being used by or is adjacent to a permitted event or an event that would otherwise require a permit. In buildings that are not owned by a locality, or by any authority or local governmental entity created or controlled by the locality, such ordinance shall apply only to the part of the building that is being used for a governmental purpose and when such building, or part thereof, is being used for a governmental purpose.

Any such ordinance may include security measures that are designed to reasonably prevent the unauthorized access of such buildings, parks, recreation or community center facilities, or public streets, roads, alleys, or sidewalks or public rights-of-way or any other place of whatever nature that is open to the public and is being used by or is adjacent to a permitted event or an event that would otherwise require a permit by a person with any firearms, ammunition, or components or combination thereof, such as the use of metal detectors and increased use of security personnel.

The provisions of this subsection shall not apply to the activities of (i) a Senior Reserve Officers' Training Corps program operated at a public or private institution of higher education in accordance with the provisions of 10 U.S.C. § 2101 et seq. or (ii) any intercollegiate athletics program operated by a public or private institution of higher education and governed by the National Collegiate Athletic Association or any club sports team recognized by a public or private institution of higher education where the sport engaged in by such program or team involves the use of a firearm. Such activities shall follow strict guidelines developed by such institutions for these activities and shall be conducted under the supervision of staff officials of such institutions.

F. Notice of any ordinance adopted pursuant to subsection E shall be posted (i) at all entrances of any building, or part thereof, owned or used by the locality, or by any authority or local governmental entity created or controlled by the locality, for governmental purposes; (ii) at all entrances of any public park owned or operated by the locality, or by any authority or local governmental entity created or controlled by the locality; (iii) at all entrances of any recreation or community center facilities operated by the locality, or by any authority or local governmental entity created or controlled by the locality; and (iv) at all entrances or other appropriate places of ingress and egress to any public street, road, alley, or sidewalk or public right-of-way or any other place of whatever nature that is open to the public and is being used by or is adjacent to a permitted event or an event that would otherwise require a permit.

1987, c. 629, § 15.1-29.15; 1988, c. 392; 1997, cc. [550](#), [587](#); 2002, c. [484](#); 2003, c. [943](#); 2004, cc. [837](#), [925](#); 2009, cc. [755](#), [772](#); 2012, c. [757](#); 2020, cc. [1205](#), [1247](#).

EXHIBIT  
“B”



## THE COMMON COUNCIL

Rouss City Hall  
15 North Cameron Street  
Winchester, VA 22601  
540-667-1815  
TDD 540-722-0782  
www.winchesterva.gov

*I, Kerri A. Mellott, Deputy Clerk of the Common Council, hereby certify on this 10 day of November 2022 that the following Ordinance is a true and exact copy of one and the same adopted by the Common Council of the City of Winchester, assembled in regular session on the 09 day of November 2022.*

### **AN ORDINANCE AMENDING CHAPTER 16, OFFENSES-MISCELLANEOUS, SECTION 16-34, POSSESSION OF FIREARMS IN CERTAIN PUBLIC PLACES, OF THE WINCHESTER CITY CODE**

**WHEREAS**, the purpose of this Section is to ensure the general health, safety, and welfare of the citizens of the City of Winchester and to protect them from the use of firearms in City buildings and on City property, to the greatest extent allowed by law;

**WHEREAS**, the Common Council believes such regulations are necessary to provide safe local government facilities for the public's use and a safe workplace environment for City of Winchester employees; and

**WHEREAS**, a Virginia court has interpreted certain portions of the City Code, which were authorized by the Virginia Generally Assembly to be enacted, to not be grounded in historic tradition as required to support restrictions on carrying firearms under the U.S and Virginia Constitutions.

**NOW THEREFORE BE IT ORDAINED**, that the Common Council of the City of Winchester, Virginia does hereby amend Chapter 16, Offenses – Miscellaneous, Section 16-34, of the Winchester City Code, which is repealed and re-enacted as follows:

#### **CHAPTER 16 -OFFENSES -MISCELLANEOUS**

Sec. 16-34. -Possession of firearms in certain public places prohibited.

- (a) "Firearm" shall mean any weapon that will, is designed to, or may be readily converted to expel a single or multiple projectiles or ammunitions by the action of an explosion of a combustible, provided that stud nailing guns, rivet guns, and similar construction equipment, neither designed nor intended as weapons, shall not be deemed firearms.
- (b) "Ammunition" shall mean the combination of a cartridge, pellet, ball, missile, projectile, primer, or propellant designed or adapted for use in a firearm.
- (c) It shall be unlawful for any person to possess, carry, or transport a firearm, ammunition, components or combination thereof in any of the following locations:
  - 1. Any building, or part thereof, owned or used by the City, or by any authority or local governmental entity created or controlled by the City, for governmental purposes; and
  - 2. Any recreation or community center facility operated by the City, or by any authority or local governmental entity created or controlled by the City.

(d) In any buildings that are not owned by the City or by any authority or local governmental entity created or controlled by the City, this Ordinance shall apply only to the part of the building that is being used for a governmental purpose and when such building, or part thereof, is being used for a governmental purpose.

(d) The provisions of this Ordinance shall not apply to the following:

1. Military personnel acting within the scope of their official duties;

2. Sworn law-enforcement personnel;

3. Private security personnel contracted or employed by the City or by any authority or local governmental entity created or controlled by the City when any of them are present in buildings or on property owned, leased, operated, or used by the City;

4. Museums displaying firearms and the personnel and volunteers of museums or living history re-enactors and interpreters, who possess firearms that are not loaded with projectiles, when such persons are participating in, or traveling to-and-from, historical perspective events that involve the display or demonstrations of such firearms;

5. A Senior Reserve Officers' Training Corps (SROTC) program operated at a public or private institution of higher education in accordance with the provisions of 10 U.S.C. § 2101 et seq., or any intercollegiate athletics program operated by a public or private institution of higher education and governed by the National Collegiate Athletic Association or any club sports team recognized by a public or private institution of higher education where the sport engaged in by such program or team involves the use of a firearm. Such activities shall follow strict guidelines developed by such institutions for these activities and shall be conducted under the supervision of staff officials of such institutions; and

6. City employees who lawfully possess a firearm or ammunition that is stored out of sight in a locked private vehicle lawfully parked on City property.

(f) The City may implement security measures that are designed to reasonably prevent the unauthorized access of such locations outlined within this section by a person with any firearms, ammunition, or components or combination thereof, including, without limitation, the use of metal detectors and increased use of security personnel.

(g) Notice of the restrictions provided within this Ordinance shall be posted at all applicable locations in accordance with §15.2-915(F) of the Virginia Code.

(h) A person found to violate any subsection of Sec. 16-34(c) or (d) shall be guilty of a Class 1 misdemeanor.

**Ordinance No. O-2022-36**

**ADOPTED by the Common Council of the City of Winchester on this 09 day of November 2022.**

***Witness my hand and the seal of the City of Winchester, Virginia.***



A handwritten signature in black ink that reads "Kerri A. Mellott".

**Kerri A. Mellott**  
**Deputy Clerk of the Common Council**

**AFFIDAVIT OF  
PATRICK HYLAND**

**VIRGINIA:**

**IN THE CIRCUIT COURT FOR THE CITY OF WINCHESTER**

**PATRICK HYLAND**

and

**MARK STICKLEY**

Case No.:

**PLAINTIFFS,**

v.

**THE CITY OF WINCHESTER,**

and

**AMANDA BEHAN, CHIEF OF POLICE,**

**DEFENDANTS.**

**AFFIDAVIT**

This day personally appeared before me, a Notary Public in and for the Commonwealth and County aforesaid, the undersigned, after proof of identification, Patrick Hyland, who being first duly sworn, gave oath to the best of the affiant's belief, knowledge, and intentions as follows:

1. I, Patrick Hyland, reside in Frederick County, Virginia, and regularly visit the City of Winchester for social and business-related events.
2. I regularly use City owned parking garages in the City of Winchester, including the Braddock St. Parking Garage, George Washington Autopark, Loudoun Autopark, and Court Square Autopark.

3. I am lawfully able to possess a firearm and have a current Concealed Handgun Permit.
4. I am an NRA certified firearms instructor, and have been teaching firearms safety classes for fifty (50) years.
5. I carry a firearm with me to protect myself, and should the need arise, protect my loved ones, as is my right under the Virginia constitution.
6. In the past, I have carried firearms in City owned parking garages to protect myself as I walk to and from my vehicle as parking garages can be locations where criminals prey upon vulnerable people.
7. There is no apparent extra police presence to guarantee my safety in Winchester City owned parking garages.
8. I desire to carry my firearm in Winchester City owned parking garages in the future to ensure my safety, and the safety of my loved ones. But for this Ordinance, I would carry my firearm on my person when I use Winchester City owned parking garages.
9. However, if I am caught with a firearm in a City Owned parking garage, I reasonably fear arrest and prosecution.

 (SEAL)

COMMONWEALTH OR STATE OF VIRGINIA  
CITY/COUNTY OF WINCHESTER, to-wit:

I, Corie Sole, a Notary Public in and for the State and County aforesaid, do hereby certify that Patrick Hyland, whose name is signed to the foregoing Affidavit this 8<sup>th</sup> day of January, 2024, has this day personally appeared and acknowledged the same before me after sufficient proof of identity.

Given under my hand this 8<sup>th</sup> day of January, 2024.



*C. Pen*

Notary Public

My commission expires: 7/31/2025

Registration #: 7932209



**AFFIDAVIT OF  
MARK STICKLEY**

**VIRGINIA:**

**IN THE CIRCUIT COURT FOR THE CITY OF WINCHESTER**

**PATRICK HYLAND**

**and**

**MARK STICKLEY**

**Case No.:**

**PLAINTIFFS,**

**v.**

**THE CITY OF WINCHESTER,**

**and**

**AMANDA BEHAN, CHIEF OF POLICE,**

**DEFENDANTS.**

**AFFIDAVIT**

This day personally appeared before me, a Notary Public in and for the Commonwealth and County aforesaid, the undersigned, after proof of identification, Mark Stickley who being first duly sworn, gave oath to the best of the affiant's belief, knowledge, and intentions as follows:

1. I, Mark Stickley, reside in Winchester, Virginia, and own a business located along the "Walking Mall" on North Loudoun St.
2. For over 20 years I have maintained a parking pass for the Loudoun Autopark at 50 E Fairfax Ln, Winchester, Virginia, which is my preferred parking location when coming to work, as the indoor parking protects my vehicle from the elements.

3. In addition to the Loudoun Autopark, I regularly use all of the City-owned parking garages including the George Washington Autopark, Braddock St. Autopark, and Court Square Autopark.
4. I am lawfully able to possess a firearm and have a current Concealed Handgun Permit.
5. I carry a firearm with me to protect myself, and should the need arise, protect my loved ones as is my right under the Virginia constitution.
6. In the past, I have carried firearms in City owned parking garages to protect myself as I walk to and from my vehicle.
7. I am aware that parking garages can be locations where criminals prey upon vulnerable people, and there is no apparent extra police presence to guarantee my safety in Winchester City owned parking garages.
8. I want to be able to carry my firearm in City owned parking garages in the future to ensure my safety, and the safety of my loved ones, as I had done prior to Winchester passing the Ordinance criminalizing what had once been lawful behavior.
9. If the Ordinance were enjoined, I would carry my firearm while I am in Winchester City owned parking garages. But for the Ordinance, I do not carry in the parking garage because if I am caught with a firearm in a City Owned parking garage, I reasonably fear arrest and prosecution.

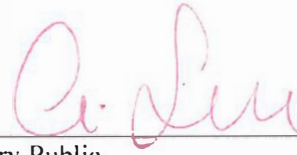
  
\_\_\_\_\_(SEAL)

COMMONWEALTH OR STATE OF VIRGINIA  
CITY/COUNTY OF WINCHESTER, to-wit:

I, Corie Sole, a Notary Public in and for the State and County aforesaid, do hereby certify that MARK STICKLEY, whose name is signed to the foregoing

Affidavit this 8<sup>th</sup> day of JANUARY, 2024, has this day personally appeared and acknowledged the same before me after sufficient proof of identity.

Given under my hand this 8<sup>th</sup> day of JANUARY 2024.



Notary Public

My commission expires: 7/31/2025

Registration #: 7932209



**ATTORNEY GENERAL'S  
NOTICE**

**VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF WINCHESTER**

**PATRICK HYLAND**

**and**

**MARK STICKLEY**

**PLAINTIFFS,**

**v.**

**CASE NO. \_\_\_\_\_**

**THE CITY OF WINCHESTER**

**and**

**AMANDA BEHAN,  
In Her Official Capacity as Chief of Police  
Winchester Police Department  
Timbrook Public Safety Center  
231 East Piccadilly Street  
Winchester, VA 22601,**

**DEFENDANTS.**

**NOTICE OF CONSTITUTIONAL CHALLENGE TO  
ATTORNEY GENERAL**

Pursuant to Rule 3:14A of the Rules of the Supreme Court of Virginia, Plaintiffs file this notice of constitutional challenge to Winchester City Code § 16-34(c)(1) (prohibition of firearms in city parking garages) (the “Winchester Ordinance”).

Plaintiffs challenge the Winchester Ordinance as violative of Article I, § 13 of the Virginia Constitution (right to keep and bear arms).

Plaintiffs do not challenge the Winchester Ordinance’s enabling statute, Va. Code § 15.2-915(E). However, the language of the Winchester Ordinance mirrors that of the enabling statute.

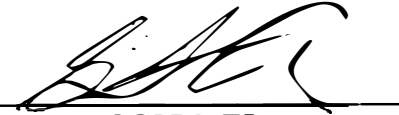
Pursuant to Rule 3:14A(b)(1), the filing in which this Virginia constitutional challenge was raised is Plaintiffs’ enclosed Complaint for Declaratory Relief and Application for Temporary and Permanent Injunction.



Respectfully submitted,

PATRICK HYLAND and  
MARK STICKLEY

BY:



COUNSEL

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