VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF WINCHESTER

VIRGINIA CITIZENS DEFENSE LEAGUE,

GUN OWNERS OF AMERICA, INC.,

GUN OWNERS FOUNDATION,

U.S. LAW SHIELD OF VIRGINIA, INC.,

MARK STICKLEY,

LOREN WILKERSON,

BRANDON ANGEL,

STONEWALL ARMS,

and

SHANNON NUCKOLS,

PLAINTIFFS,

v.

THE CITY OF WINCHESTER,

JOHN PIPER,
(In his Official Capacity as Chief of Police)
Rouss City Hall
16 North Cameron Street
Winchester, Virginia 22601),

DEFENDANTS.

CASE NO. CL 21-206

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

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(a)(2), 16-34(a)(3), and 16-34(a)(4) and Virginia Code § 15.2-915(E), are: (a) violative of Article I, § 13 of the Constitution of Virginia (right to keep and bear arms); (b) violative of Article I, § 11 of the Constitution of Virginia (due process of law) as being void for vagueness; (c) violative of Article I, § 12 of the Constitution of Virginia (freedom of speech, right to assemble and to petition); and (d) violative of Article I, § 10 of the Constitution of Virginia (general warrants of search or seizure prohibited);

(2) immediate entry of a temporary injunction on an emergency basis, enjoining the Chief of Police, and all other law enforcement divisions, officers, agencies, and agents from enforcing the prohibitions contained in Virginia Code § 15.2-915(E) and Winchester City Code §§ 16-34(a)(2), 16-34(a)(3), and 16-34(a)(4);

(3) issuance of a permanent injunction enjoining the administration, enforcement, and imposition of the prohibitions contained in Virginia Code § 15.2-915(E) and Winchester City Code §§ 16-34(a)(2), 16-34(a)(3), and 16-34(a)(4) as well as requiring defendants to notify the public of the injunction;

(4) a writ of mandamus to enjoin enforcement of Virginia Code § 15.2-915(E) and Winchester City Code §§ 16-34(a)(2), 16-34(a)(3), and 16-34(a)(4); and

(5) such other relief as the Court may deem appropriate, and in support thereof states 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 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 nonprofit civic league that is exempt from federal income taxes under § 501(c)(4) of the U.S. Internal Revenue Code ("IRC"). VCDL has tens of thousands of members and operates as a nonprofit, non-partisan, grassroots organization dedicated to advancing the fundamental human rights of all Virginians to keep and bear arms as guaranteed by Article I, § 13 of the Constitution of the Commonwealth of Virginia.

4) 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 nonprofit organization exempt from federal income taxes under § 501(c)(4) of the IRC. GOA's mission is to preserve and defend the inherent rights of gun owners.

5) Plaintiff Gun Owners Foundation ("GOF") is a Virginia non-stock corporation with its principal place of business in Virginia at 8001 Forbes Place, Suite 202, Springfield, VA 22151. GOF is organized and operated as a nonprofit 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 from across the country, including Virginia residents.

6) Plaintiff U.S. Law Shield of Virginia, Inc. is a Virginia for-profit corporation, with a principal place of business in Houston, Texas. U.S. Law Shield of Virginia is a pro-firearms organization with thousands of members across the state, including several in this jurisdiction.

7) Plaintiff Loren Wilkerson is a United States citizen and resident of Winchester, Virginia. She is a law-abiding citizen, is eligible to possess firearms, and has a valid Virginia Concealed Handgun Permit (CHP).

8) Plaintiff Mark Stickley is a United States citizen, a resident of Winchester, Virginia, and owns a business located in Winchester, Virginia. He is a law-abiding citizen, is eligible to possess firearms, and has a valid Virginia CHP.

9) Plaintiff Brandon Angel is a United States citizen, a resident of Kearneysville, West Virginia, and has a valid West Virginia Concealed Pistol License.

10) Plaintiff Stonewall Arms, L.L.C. is a Virginia limited liability corporation, a Federal Firearms Licensee, and has its principal place of business in Winchester, Virginia.

11) Plaintiff Shannon Nuckols is a United States citizen, the owner of Mac Shack Express, L.L.C., a Virginia limited liability corporation, runs a food truck called the Mac Shack Express, and has a valid CHP.

12) Defendant City of Winchester is an independent city organized under the Constitution and laws of the Commonwealth of Virginia.

13) Defendant John Piper is the Chief of Police for the City of Winchester, Virginia, and is responsible for oversight and enforcement of §§ 16-34(a)(2), (a)(3), and (a)(4) of the Winchester City Code of Ordinances. He is being sued in his official capacity.

CONSTITUTIONAL AND STATUTORY BACKGROUND

14) The Virginia Constitution, Article I, § 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....

15) There is no Virginia statute which prohibits a person from openly carrying a firearm generally.

16) 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.

17) Virginia, like many other states, has what is known as a "preemption" law found at Virginia Code § 15.2-915, which generally prevents localities from creating a patchwork of gun laws across the Commonwealth that are difficult or burdensome for otherwise law-abiding gun owners to navigate.

18) 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"), localities have been delegated by the General Assembly 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. [Virginia Code § 15.2-915(E).]

19) 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, 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, Richmond, Roanoke, and Winchester.

20) The Winchester Ordinance, attached as Exhibit "B," reads as follows:

> Sec. 16-34. - Possession of firearms in certain public places prohibited.
> (a) 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;
> 2. Any public park owned or operated by the City, or by any authority or local governmental entity created or controlled by the City;
> 3. Any recreation or community center facility operated by the City, or by any authority or local governmental entity created or controlled by the City;
> 4. 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.
>
> (b) 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.

(c) 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 owned 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.

(d) 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.

(e) 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.

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

21) These enactments have created a patchwork of laws, where some localities have no local gun restrictions, some have adopted restrictions in

every area authorized by this amendment, and others have adopted only some of the restrictions authorized by § 15.2-915(E). For example, Newport News Ordinance 43-3 restricts firearms in every area authorized by § 15.2-915(E), but specifically exempts those with a valid concealed handgun permit. A lawsuit challenging the restrictions imposed by the county of Fairfax, *Lafave v. County of Fairfax, No. 01569* (2021) is currently pending in the Circuit Court for Fairfax County.

22) 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) (*see* ¶ 17). 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 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.[1]

[1] B. Brehm, "Winchester bans guns at city-owned properties, events," *The Winchester Star* (Feb. 11, 2021).

23) A violation of Winchester City Code § 16-34 constitutes a Class 1 misdemeanor, punishable by up to 1 year imprisonment, and a fine of up to $2,500.00.

24) Winchester City Code § 14-148 states:

> It shall be unlawful for any person to conduct or participate in a parade, public assembly, or special event unless a written permit has been issued in accordance with the provisions of this article.

25) Winchester City Code § 14-147 defines "public assembly" as:

> [A]ny meeting, demonstration, picket line, rally or gathering of more than ten people for a common purpose as a result of prior planning that interferes with or has a tendency to interfere with the normal flow or regulation of pedestrian or vehicular traffic upon the streets, sidewalks, or other public property within the city or that interferes with or has a tendency to interfere with the normal use of any public property in a place open to the general public.

26) Winchester City Code § 14-147 defines "special event" as any:

> 'Public Assembly' which occurs upon City property that requires the closure of City streets, sidewalks or parks or where it is anticipated that over 25 people may gather and participate, or which requires licenses and permits by City departments beyond the assembly permit required by this Section or where video or film production are conducted for commercial purposes. This may include but is not limited to fairs, festivals, carnivals, sporting events, foot runs, markets, dances, and exhibitions."

27) There are multiple exceptions to the requirement to obtain a permit listed in Winchester City Code § 14-148, including spontaneous events and recreational activities.

FACTUAL ALLEGATIONS

28) Winchester is home to over 270 acres of public park land, including over 170 acres in Jim Barnett Park.[2]

29) Park amenities include pavilions, grills, indoor and outdoor pools, basketball courts, tennis courts, fitness trail, disk golf course, horseshoe courts, dog park, and a fishing lake.

30) Plaintiff Mark Stickley owns and operates a business located on a portion of Loudoun St. in Winchester, Virginia known as the "walking mall." (See attached affidavit of Mark Stickley)

31) Plaintiff Stickley regularly uses the walking mall as a source of ingress and egress to his business.

32) At various times throughout the year, gatherings, festivals, and other public events that are organized as permitted events occur on the walking mall, including Winchester's Shenandoah Apple Blossom Festival.

[2] *See link:* https://www.winchesterva.gov/parks/facilities.

33) Historically, the walking mall has been used for other gatherings, including events for which a permit would be required, even if no permit was issued.

34) Plaintiff Stickley possesses a CHP and carries a concealed weapon in his business for his own protection and the protection of his employees.

35) Plaintiff Stickley avers that, at times, he cannot accurately ascertain whether gatherings on the walking mall are permitted events or events for which a permit would otherwise be required.

36) Plaintiff Stickley desires to enter and exit his business from the walking mall while carrying a firearm, without fear of arrest, but is prohibited by Winchester City Ordinance § 16-34 from carrying his firearm through the walking mall to his place of business during permitted events.

37) The language of Winchester City Ordinance § 16-34 prohibits Plaintiff Stickley from possessing his firearm even in his own place of business, as its language includes "or any other place of whatever nature that is open to the public," which includes Plaintiff Stickley's business, which is certainly a "place of whatever nature" and is generally "open to the public."

38) Even if Winchester City Ordinance § 16-34 allows firearms to be present in private businesses during permitted events, then it certainly prohibits Plaintiff Stickley from carrying his firearm from one place where he may lawfully possess it (his home) to another place he may lawfully possess it (his business).

39) Plaintiff Loren Wilkerson is a mother to three, has a valid CHP, and regularly carries a firearm to defend herself and her children. (See attached affidavit of Loren Wilkerson)

40) Plaintiff Wilkerson currently carries a firearm when traveling through Winchester, including on the walking mall at times when an event requiring a permit could occur.

41) Prior to enactment of Winchester City Ordinance § 16-34, Plaintiff Wilkerson carried a concealed weapon when taking her children to public parks in Winchester, including Jim Barnett Park.

42) Plaintiff Wilkerson desires to once again carry a firearm as a means to protect herself and her family within Winchester City parks, which are open to the public for a variety of purposes.

43) Plaintiff Wilkerson desires to carry a firearm into Winchester City park facilities that may be construed as community event centers or recreation centers.

44) Plaintiff Brandon Angel is a VCDL and GOA member and desires to attend events while carrying a firearm in the city of Winchester that may constitute permitted events, without fear of arrest. (See attached affidavit of Brandon Angel)

45) Plaintiff Angel desires to attend city parks in Winchester while carrying a firearm for lawful purposes, including self-defense.

46) Plaintiff Angel desires to obtain a permit from the City of Winchester to hold a pro-Second Amendment public demonstration where he desires to openly carry a firearm. The purpose of such a demonstration would be for like-minded gun owners to assemble and petition their local government, and to convey that message in part through the symbolism of the lawful carrying and display of firearms.

47) Plaintiffs VCDL, GOA, GOF, and U.S. Law Shield each have thousands of members across the Commonwealth of Virginia, including many in this jurisdiction who wish to carry firearms in the various areas where otherwise lawful firearms carry has been prohibited by Winchester Ordinance § 16-34 and Virginia Code § 15.2-915. (See attached affidavits of Erich Pratt of GOA and GOF, affidavit of Philip Van Cleave of VCDL, and Randy Macchi of U.S. LawShield of Virginia)

48) Plaintiff VCDL, with support from Plaintiff Angel, has, in the past, organized a "Second Amendment sanctuary" meeting in Winchester, at which supporters carried firearms, and VCDL desires to hold such meetings in the future in Winchester, where the Winchester City Board and Frederick County Board of Supervisors meet to receive input from citizens and to carry on the business of government, including enacting ordinances.

49) GOA is a pro-firearms organization with many members within the Commonwealth who are interested in preserving the natural and constitutionally guaranteed right to possess firearms.

50) GOF is a pro-firearms organization with support from many within the Commonwealth who are interested in preserving the natural and constitutionally guaranteed right to possess firearms.

51) Numerous members of VCDL, GOA, GOF, and U.S. Law Shield attended public parks and community centers in Winchester while carrying firearms, prior to passage of the challenged ordinance. Due to the threat of prosecution, members of VCDL, GOA, GOF, and U.S. Law Shield may no longer possess, carry, or transport firearms, ammunition, or firearm components in city parks and government-owned community

or recreation centers, and even on public streets and sidewalks during permitted events.

52) Plaintiff Stonewall Arms is a Federal Firearms Licensee (FFL) located in Winchester, Virginia, which engages in constitutionally protected commerce within the City, and which has an interest in advancing the rights of its customers to keep and bear arms as guaranteed by the Virginia Constitution. (See attached affidavit of A.J. Williams of Stonewall Arms)

53) At various times, Stonewall Arms moves firearms, ammunition, and components thereof throughout the city of Winchester for purposes in furtherance of its commercial purpose. Stonewall Arms also receives frequent deliveries of firearms, ammunition, and components via common carriers and delivery companies at its place of business. At times, employees, agents, bailees, and customers of Stonewall Arms may transit public streets during events which are permitted events or events for which a permit was required. All of these activities would now be prohibited at various times and in various places by Winchester Ordinance § 16-34 and Virginia Code § 15.2-915.

54) Plaintiff Shannon Nuckols operates a food truck called the Mac Shack Express. The Mac Shack Express has operated for years at the annual

Apple Blossom Festival, and in various public locations throughout the city of Winchester, and at various events situated in public parks. (See attached affidavit of Shannon Nuckols)

55) In the past, Plaintiff Nuckols has been the victim of robbery and wishes to lawfully carry a firearm while attending permitted events, and while catering in city parks, to defend herself.

56) Should Plaintiffs and members of Plaintiff businesses or organizations possess, carry, or transport firearms, ammunition, or even firearm or ammunition components in a city park, government-owned community event or recreation center, or on 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, they subject themselves to the possibility of arrest and prosecution.

57) Due to the ordinance's enactment by Winchester City Council and its enforcement by Chief of Police Piper, 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)

58) Paragraphs 1 through 57 are realleged in full and hereby incorporated by reference.

59) The challenged ordinance significantly restricts the exercise of, and therefore infringes, the pre-existing right recognized and protected by Article I, § 13 of the Virginia Constitution, which 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....

60) It is not disputed that the General Assembly granted the City of Winchester the power to enact local gun control in the manner that it did. Such delegation and subsequent enactment cannot be reconciled with the Virginia Constitution.

61) The prohibitions contained in Winchester City Code §§ 16-34 (a)(2), 16-34(a)(3), and 16-34(a)(4) infringe upon the right to keep and bear arms guaranteed by Article I, § 13 of the Constitution of Virginia.

62) The protection of the right to keep and bear arms is not a government-bestowed right enshrined in an outdated document, but rather the Commonwealth's recognition of a pre-existing right with which Virginians were endowed by their Creator, and operates as a fixed

limitation on the power of state or local government to enact legislation affecting firearms. In other words, Article I, § 13 operates as the Commonwealth's highest "preemption" law, independent of any provision of Virginia Code § 15.2-915.

63) Article I, § 13's protections have been deemed similar to the protections recognized by the Second Amendment, but Plaintiffs do not bring this complaint based on the Second Amendment, or any provision of the U.S. Constitution or any federal statute.

64) The 1969 Virginia Commission on Constitutional Revision 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).]

65) Although this suit does not allege a violation of the Second Amendment, the rights ensured by the Second Amendment and Article I, § 13 have been said by the Virginia Supreme Court to be "co-extensive." *Digiacinto v. Rector & Visitors of George Mason Univ.*, 281 Va. 127, 133, 704 S.E.2d 365, 368 (2011).

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

67) 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 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."[3]

68) Although various federal courts have used different tests to decipher boundaries surrounding the Second Amendment, there is no uniform test.

---

[3] 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).

In the past, some federal courts have used a "two-step" test to evaluate cases involving the right to keep and bear arms, while others have urged "interest balancing" tests such as "intermediate scrutiny." *See e.g.*, *Kolbe v. Hogan*, 849 F.3d 114 (4th Cir. 2017). *See also District of Columbia v. Heller*, 554 U.S. 570, 689 (2008) (Breyer, J., dissenting).

69) Virginia courts have never adopted any of the above tests, instead opting for a categorical approach (as applied in *Prekker v. Commonwealth,* 66 Va. App. 103, 116-17 (Ct. App. Va. 2016)), also known as "text, history, and tradition" test (as applied in *Lynchburg Range & Training v. Northam*, 105 Va. Cir. 159,163 (Lynchburg Cir. Ct. 2020)).

70) Federal courts also seem to be shifting away from interest balancing tests and toward the test that has been adopted by some Virginia courts evaluating the "text, history, and tradition" of cases involving the right to keep and bear arms.[4] This shift makes sense as, other than to circumvent

[4] In the year after *McDonald* was decided, the D.C. Circuit upheld D.C.'s modified gun regulation scheme, but then-Judge (now Justice) Kavanaugh dissented and would have held that *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 v. District of Columbia*, 670 F.3d 1244 (D.C. Cir. 2011) ("*Heller II*") at 1271 (Kavanaugh, J., dissenting). *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."); *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

the plain language of the text, interest balancing by the Court is unnecessary. As Justice Scalia recognized in *Heller*, any necessary interest balancing was performed by the People when the Second Amendment was ratified. *See Heller* at 635. The same was true when Article I, § 13 was ratified and incorporated into the Constitution of Virginia.

71) For the reasons set forth *supra,* Plaintiffs urge this Court to decline any invitation that may come from the City of Winchester to follow an interest balancing approach, which has undermined the clear meaning of the right to keep and bear arms and the City's expected invitation to the Court to use balancing tests such as "intermediate scrutiny," or to apply a "two-step" test used in certain federal courts, which allows the court to sidestep around the unambiguous text and meaning of constitutional protections. Rather, the Court is urged to 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 595. *See also Lynchburg Range & Training, LLC v. Northam* at 164 ("courts must

---

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 – as required under *Heller* and *McDonald* – rather than a balancing test like strict or intermediate scrutiny.").

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.").

72) Plaintiffs urge the Court to utilize the storied "text, history, and tradition" test as framed by now-Justice Kavanaugh in *Heller II*, which faithfully applies the constitutional text. *See Heller II* at 1271.

73) Plaintiffs do not challenge Winchester City Code § 14-34(a). However, the locations in which firearms have been banned by the City of Winchester in the remaining subsections of the Ordinance do not govern sensitive buildings, but rather areas open to the public generally for a wide variety of purposes, and areas that have not traditionally had prohibitions on the bearing of arms.

74) In *Digiacinto,* the Supreme Court distinguished and then justified upholding a firearm ban in sensitive buildings on a college campus by describing the buildings as "[u]nlike a public street or park, a university traditionally has not been open to the general public." *Digiacinto* at 136.

75) By contrast, a public street or sidewalk, or a public park, is open to the general public. Under *Digiacinto*, Plaintiffs' right to bear a firearm is unlawfully restricted by the ordinance as it applies to public streets and parks.

76) In sensitive buildings, the government provides security measures such as armed security guards or metal detectors to avoid danger from criminals, and in order to protect the security and sanctity of official government business (such as a courtroom). However, in public streets and parks, Plaintiffs' best defense against a potential threat is to possess firearms, and to be personally responsible for their own defense. Indeed, the right to bear arms is closely tied to the right of self-protection. In a 2011 Attorney General opinion, Kenneth Cuccinelli II cited *Heller* and wrote:

> [s]elf-defense is a basic right, recognized by many legal systems from ancient times to the present day, and in *Heller*, we held that individual self-defense is the *central component* of the Second Amendment right . . . Thus, we concluded, citizens must be permitted to use handguns for the core lawful purpose of self-defense.
>
> Given the strict construction of penal statutes and the pedigree of the right to self-defense, I conclude that lawfully carrying a firearm for self-defense and personal protection constitutes a "good and sufficient" reason within the intendment of § 18.2-283.[5] [quoting *McDonald v. City of Chicago* at 767 (quotations omitted).]

77) In this same 2011 opinion, Attorney General Cuccinelli recognized that the "Second Amendment acts as a restraint on government, not private parties." Here, the City of Winchester has restricted possession

---

5 *See* https://www.oag.state.va.us/files/Opinions/2011/11-043%20cole.pdf.

of firearms in areas where self-protection, the most basic protection ensured by the right to keep and bear arms, is most needed.

78) Plaintiffs' right to possess a firearm is similarly restricted by the ordinance in community and recreation centers, some of which are situated within park land.

79) In the community and recreation centers, there are no security guards or metal detectors to guard against the danger of criminal activity. Nor is official government business being conducted, such as in a courthouse. Rather, such places are open to the public generally for recreational and other lawful uses, including constitutionally protected meetings, gatherings, and assemblies. As on the public streets and parks, Plaintiffs' best defense against a potential threat in such places is to "bear" firearms for which they are personally responsible.

80) Plaintiffs' right to possess a firearm is restricted by the ordinance on any public street, alley, or sidewalk or public right-of-way or any other place of whatever nature that is open to the public and is adjacent to a permitted event or an event that would otherwise require a permit.

81) Many permitted events and events for which a permit would otherwise be required do not provide additional safety measures such as security guards or metal detectors to avoid danger from criminals who may

simply disregard the ordinance or a posted sign. Instead, Plaintiffs' best defense against a potential threat at such events, or while transiting by or through such events, is to possess firearms for which they are personally responsible.

82) Although Winchester City Code § 16-34(c) contains numerous exceptions for those such as military personnel acting within the scope of their official duties and sworn law enforcement officers, the list of those exempted is arbitrary and fails to exempt even judges from the list of those prohibited from carrying at or adjacent to a permitted event. Indeed, some other jurisdictions which have enacted local gun control have carved out exceptions for those with a valid Concealed Handgun Permit.[6]

83) Prohibition of firearms in city parks, community event or recreation centers, and in any public street, alley, or sidewalk or public right-of-way or any other place of whatever nature that is open to the public and is adjacent to a permitted event or an event that would otherwise require a permit violates Plaintiffs' right to "bear" a firearm as guaranteed by Article I, § 13.

[6] For example, the City of Newport News enacted local gun control pursuant to Virginia Code § 15.2-915, but exempted those with a concealed handgun permit, carrying a concealed handgun. Newport News Code § 43-3(c)(10).

COUNT II
(Article I, § 11, Virginia Constitution, Due Process of Law)

84) Paragraphs 1 through 83, *supra*, are realleged in full and hereby incorporated by reference.

85) Winchester City Ordinance § 16-34(a)(4) restricts firearms 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."

86) Article I, § 11 of the Virginia Constitution says in relevant part that "no person shall be deprived of his life, liberty, or property without due process of law."

87) An ordinance or law is void for violation of due process and is unconstitutionally vague if it lacks sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement. This standard is articulated by the Court of Appeals of Virginia saying the Constitution requires "'that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act

accordingly,' and second, 'preventing arbitrary and discriminatory enforcement by requiring that laws ... provide explicit standards to those who apply them.'" *Tjan v. Commonwealth,* 46 Va. App. 698, 707-08, 621 S.E.2d 669, 673 (Ct. App. Va. 2005) quoting *Parker v. Commonwealth,* 24 Va. App. 681, 687, 485 S.E.2d 150, 153 (1997).

88) Winchester City Ordinance § 16-34 does not define "open to the public," and it is unclear to Plaintiffs whether open to the public may apply to businesses which are open to the public.

89) Plaintiff Stickley owns a business on the Loudoun Street walking mall that is generally open to the public during business hours.

90) Plaintiff Stickley carries a firearm with him at work and is concerned about the possibility of arrest due to carrying when a permitted event, or event requiring a permit, is taking place on the walking mall.

91) The ordinance does not define the scope of the word "adjacent."

92) Plaintiffs who desire to remain law-abiding cannot ascertain when they may be close enough to a permitted event for it to be designated "adjacent," therefore making it unclear where it is unlawful for them to possess firearms, firearm components, and ammunition.

93) The phrase "event that would otherwise require a permit" is not defined in statute, and Plaintiffs are left to guess at when gatherings of

persons in public places are such that a permit would have otherwise been required.

94) Virginia Code § 15.2-915(F) states that:

> 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.

95) Due to the nature of permitted events occurring only sporadically, and events that would otherwise require a permit occurring with even less predictability, localities seeking to comply with the notice requirements of § 15.2-915(F) must task police or another governmental body with the onerous task of putting up signage before every permitted event and require their officers to rapidly deploy to provide signage when an event otherwise requiring a permit occurs unannounced in their jurisdiction. Alternatively, localities such as Richmond appear to leave signs up permanently throughout the jurisdiction announcing that, if a permitted

event, or event otherwise requiring a permit occurs, firearms, ammunition, and firearm or ammunition components are restricted. Both scenarios are inadequate. The first scenario presents an incredibly burdensome logistical nightmare for those posting (and later removing) signs and requires citizens to be on the constant lookout for such signs, and the second creates a situation where signs kept up round-the-clock chill the carry of firearms even during times when it is lawful, and due to their constant presence, provide no real notice as to when the warning signs are actually in effect.

96) Due to the sometimes sporadic or transient nature of events, and with signs presenting a poor solution, law enforcement and civilians may be asked to guess at when the carry of firearms, ammunition, or components becomes subject to the restrictive ordinance, and therefore criminal. Many visitors to Winchester will be caught unaware, making their visit to the city while carrying firearms a risky proposition. Indeed, unlike Winchester, some other localities who decided to enact local gun control pursuant to Virginia Code § 15.2-915(E) (such as the City of Fairfax) recognized the ambiguity in attempting to prohibit firearms at permitted

events and avoided attempting such an unclear prohibition by striking the language relating to firearms at permitted events completely.[7]

97) Although Virginia Code § 15.2-915(F) (incorporated by Winchester City Code § 16-34(e)) requires any jurisdiction which enacts local gun control pursuant to Virginia Code § 15.2-915(E) to post signage warning of the prohibition at entrances to areas affected by ordinance, a locality's failure to ensure proper signage does not appear on the face of the code to invalidate the firearms prohibition, nor provide a statutory defense to those prosecuted for violating the ordinance. Therefore, Plaintiffs fear that even where no signage is posted, should they unwittingly traverse an area adjacent to a permitted event, they would be subject to arrest and prosecution for a violation that they unknowingly committed.

98) Plaintiff Stonewall Arms regularly transports firearms, firearm components, and ammunition through the city during the course of its operation as a Federal Firearms Licensee, and to and from training operations that it maintains. Due to concern about how far prohibition on firearms may extend from permitted events, Plaintiff Stonewall Arms now fears arrest and prosecution when carrying out day-to-day business

[7] A February 10th 2021 online article describes Fairfax City's local gun control ordinance, and the reason for the amendment striking the prohibition of firearms at permitted events. *See* M. O'Connell, "Amended Gun Ban Ordinance Passed by Fairfax City Council," *Patch* (Feb. 10, 2021).

activities such as transporting firearms for their business on public roads which may pass a permitted event. Stonewall Arms therefore understandably fears disruption of its lawful business activities.

99) The ordinance's use of the term "adjacent" and the phrases "open to the public" and "event that would otherwise require a permit" are unconstitutionally vague and violate Plaintiffs' right to due process. For example, including roads that are part of the Apple Blossom Parade, along with roads that are "adjacent" to those roads, would mean that a large portion of the City of Winchester could be declared a gun-free zone.

100) Due to possibility of arrest, Plaintiffs are unable to carry and transport firearms in places where they otherwise have and would continue to lawfully do so, and are suffering irreparable harm by being denied their constitutional right as articulated in Article 1, § 13.

COUNT III
(Article I, §12, Virginia Constitution, Freedom of Speech, Association, and Petition)

101) Paragraphs 1-100 are realleged in full and hereby incorporated by reference.

102) Plaintiffs seek to exercise their right to assemble in public parks, public streets, roads, alleys and sidewalks, and other locations covered by

the ordinance to petition government, and to demonstrate and encourage support for gun rights. If the Winchester Ordinance is permitted to stand, Plaintiffs and other law-abiding citizens will be irreparably denied their right to peaceably assemble, engage in protected speech, and petition the government, as they would like and as guaranteed by Article I, § 12 of the Constitution of Virginia.

103) Without relief from this Court, Plaintiffs will be forced to an unenviable choice — if they wish to exercise their constitutionally protected Free Speech, Association, and Petition rights under Article I, § 12, they must give up their right to keep and bear arms under Article I, § 13, or *vice versa*.

104) The unique nature (and power) of a pro-gun demonstration with firearms is to be found in the combination of the three rights being exercised together. The act of peaceably and openly carrying firearms — which has previously occurred on a very large scale, such as VCDL Lobby Day in Richmond, Virginia on January 20, 2020 without any incident whatsoever — is itself a form of protected speech, particularly when events are specifically intended to express opinions to public officials through the symbolic act of bearing arms. And the freedom to assemble and petition should be able to be exercised at the same time.

See, e.g., Nordyke v. King, 319 F.3d 1185, 1190 (9th Cir. 2003) ("[g]un possession can be speech where there is 'an intent to convey a particularized message, and the likelihood [is] great that the message would be understood by those who viewed it.'"). It is difficult to imagine a more clear example of an event where carrying firearms is speech than at a pro-gun event where a firearm is intended to convey an unambiguous political message. *See also Spence v. Washington*, 418 U.S. 405 (1974) (to determine whether conduct constitutes speech for First Amendment purposes, we must ask whether "[a]n intent to convey a particularized message was present" and whether "in the surrounding circumstances the likelihood was great that the message would be understood by those who viewed it."). *Id.* at 410-11.

105) Similar pro-gun gatherings have previously been organized by VCDL and occurred in Winchester, including both the Winchester Second Amendment sanctuary gathering and the Frederick County Second Amendment sanctuary gathering, at which nearly 1000 Frederick County residents assembled in Winchester to demonstrate their support for the

Second Amendment sanctuary resolution, which was ultimately passed by the Frederick County Board of Supervisors.[8]

106) Although this claim is not being brought under the First Amendment or any other provision of the U.S. Constitution, the Virginia Supreme Court has indicated that Article I, § 12 of the Virginia Constitution may provide greater protections than the First Amendment. *See Robert v. City of Norfolk*, 188 Va. 413, 420, 49 S.E.2d 697, 700 (1948) ("The Constitution of Virginia is broader than that of the United States in providing that — 'any citizen may freely speak, write and publish his sentiments on all subjects.'" The U.S. Supreme Court has repeatedly recognized First Amendment protection for symbolic speech. *See, e.g., Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 513 (1969) (the First Amendment protects the action of the wearing of an armband protesting the Vietnam War by students in school); *Texas v. Johnson*, 491 U.S. 397 (1989) (the First Amendment protects the action of burning the American flag and such action may not be criminalized by a state); and *United States v. Eichman*, 496 U.S. 310 (1990) (burning of the American flag may not be criminalized by the federal government).

[8] *See* http://legistarweb-production.s3.amazonaws.com/uploads/attachment/pdf/486870/ResolutionAddressingSecondAmendment2019.pdf.

107) The loss of this liberty is of great import, requiring injunctive relief. As the U.S. Supreme Court has noted, "The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Elrod v. Burns*, 427 U.S. 347, 373 (1976).

COUNT IV
(Article I, § 10, Virginia Constitution, General Warrants of Search and Seizure Prohibited)

108) Paragraphs 1-107 are realleged in full and hereby incorporated by reference.

109) Article I, § 10 of the Virginia Constitution states:

> That general warrants, whereby an officer or messenger may be commanded to search suspected places without evidence of a fact committed, or to seize any person or persons not named, or whose offense is not particularly described and supported by evidence, are grievous and oppressive, and ought not to be granted.

110) Winchester City Code § 16-34(d) authorizes the City to:

> 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.

111) Plaintiffs visiting Winchester city parks, community event centers, and permitted events have a right to be protected from searches of their

persons. Under case law they have a reasonable expectation of privacy to be free from search and seizure without legal justification.

112) In enacting Winchester City Code § 16-34(d), the city appears to have authorized the use of metal detectors to ensure that its firearms prohibitions are being obeyed in locations such as parks and at permitted events such as parades.

113) The use of metal detectors and other additional security measures in a checkpoint-like fashion outside of areas generally open to the public, such as permitted events or parks, constitutes both a search and a temporary seizure of Plaintiffs. Such conduct is a clear blanket search without evidence of a fact committed to give grounds for such search.

114) Authorization to use metal detectors and other security measures in such an indiscriminate manner violates Plaintiffs' rights to be free of unreasonable search and seizure and is therefore both grievous and oppressive, and violates Article I, § 10 of the Virginia Constitution.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that the Court:

1) Render a declaratory judgment that the challenged provisions of Winchester City Code §§ 16-34(a)(2), 16-34(a)(3), and 16-34(a)(4) are unconstitutional

for violation of Article I, § 13 of the Virginia Constitution and therefore are void.

2) Render a declaratory judgment that the challenged provisions of Winchester City Code § 16-34(a)(4) are unconstitutional for violation of Article I, § 11 of the Virginia Constitution and therefore are void.

3) Render a declaratory judgement that the challenged provisions of Winchester City Code § 16-34(a)(4) are unconstitutional for violation of Article I, § 12 of the Virginia Constitution and therefore are void.

4) Render a declaratory judgement that the challenged provisions of Winchester City Code § 16-34(d) are unconstitutional for violation of Article I, § 10 of the Virginia Constitution and therefore are void.

5) Enter preliminary and permanent injunctions enjoining the City of Winchester, Chief of Police John Piper, and any agents, officers, employees, or officials from enforcing the Winchester City Code §§ 16-34(a)(2), 16-34(a)(3), and 16-34(a)(4).

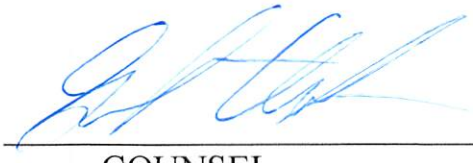
6) Issue a writ of mandamus to enjoin enforcement of Winchester City Code §§ 16-34(a)(2), 16-34(a)(3), and 16-34(a)(4), as well as require defendants to notify the public of the injunction.

7) Grant such further relief pursuant to and in accordance with such declaratory judgment, to include permanent injunctive relief, Plaintiffs' costs and

attorney fees, and such other and further relief as the Court may deem appropriate.

Respectfully Submitted,

VIRGINIA CITIZENS DEFENSE LEAGUE
GUN OWNERS OF AMERICA, INC.
GUN OWNERS FOUNDATION
U.S. LAW SHIELD OF VIRGINIA, LLC
LOREN WILKERSON
STONEWALL ARMS
BRANDON ANGEL
SHANNON NUCKOLS
MARK STICKLEY

BY: 

COUNSEL

Gilbert Ambler
Virginia State Bar No. 94325
Ambler Law Offices
20 S. Braddock St
Winchester, VA 22601
P: (540) 550-4236
F: (540) 773-2414
E: Gilbert@amblerlawoffices.com

Robert J. Olson (VSB No. 82488)
William J. Olson (VSB No. 15841)
William J. Olson, P.C.
114 Creekside Lane
Winchester, VA 22602
Telephone: 540-450-8777
E-mail: wjo@mindspring.com
370 Maple Avenue West, Suite 4
Vienna, VA 22180
Telephone: 703-356-5070

David G. Browne (VSB No. 65306)
Spiro & Browne, PLC
6802 Paragon Place, Suite 410
Richmond, VA 23230
Telephone: 804-573-9220
E-mail: dbrowne@sblawva.com

CERTIFICATE OF SERVICE

In accordance with Va. Code § 8.01-629, the undersigned certifies that on April 21, 2021 a true and accurate copy of the foregoing Complaint and Petition was served upon the following, thereby giving notice of the same:

VIA FIRST CLASS MAIL POSTAGE PREPAID TO:

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

VIA FACSIMILE FIRST CLASS MAIL POSTAGE PREPAID TO:

Chief John Piper
City of Winchester, Virginia
Rouss City Hall
16 North Cameron Street
Winchester, VA 22601
Fax: (540) 722-3618

Dan Hoffman, City Manager
The City of Winchester, Virginia
Rouss City Hall
16 North Cameron Street
Winchester, VA 22601
Fax (540) 722-3409

EXHIBIT

"A"

Code of Virginia

§ 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.

EXHIBIT

"B"

City of Winchester

COUNCIL ACTION MEMO

☐ **Resolution** ☒ **Ordinance** ☐ **Discussion**

To:	Honorable Mayor and Members of City Council
From:	Dan Hoffman, City Manager
Subject:	AN ORDINANCE TO AMEND CHAPTER 16 OF THE WINCHESTER CITY CODE ADDING SECTION 16-34 PERTAINING TO POSSESSING, CARRYING, OR TRANSPORTING FIREARMS IN CERTAIN PUBLIC PLACES
Meeting:	City Council Regular Meeting - Feb 09 2021
Regular Meeting:	February 09, 2021
Presenter:	Dan Hoffman, City Manager

THE ISSUE:
Does Council wish to prohibit the possession, carrying, or transportation of firearms or ammunition in certain City facilities and public places pursuant to §15.2-915(E) of the Virginia Code?

STRATEGIC PLAN:
Goal III: Advance the quality of life for all Winchester residents by increasing cultural, recreational, and tourism opportunities; enhance and maintain infrastructure and promote and improve public safety.

BACKGROUND INFORMATION:
Effective July 1, 2020, the Code of Virginia was amended to authorize localities to prohibit (by Ordinance) the possession, carrying, or transportation of firearms or ammunition in buildings, facilities, or properties owned or in-use by the locality or locality-controlled entities for governmental purposes, as well as public rights-of-way being used by, or adjacent to, a permitted event or an event which would otherwise require a permit. This legislation also permits localities to implement reasonable security measures to prevent unauthorized access to applicable buildings or property by those in possession of firearms or ammunition. (§15.2-915(E))

If approved, this Ordinance would prohibit the possession of firearms in all City government buildings, including: City Hall, the Creamery building, the War Memorial building, the Department of Social Services building, the Timbrook Public Safety Center (and Annex building), City Yards, and any other building owned by, or being used by the City for governmental purposes. It would also apply to any City public park, and certain public rights-of-way in connection to permitted events.

The provisions of this proposed Ordinance would not apply to members of the military in the performance of their duties, sworn law-enforcement personnel, security personnel contracted by the City, museums and historical re-enactors, Senior Reserve Officers' Training Corps program personnel, or other intercollegiate athletics programs involving the use of firearms.

Proper signage will be required at all applicable facilities and property to notify the public of the prohibition of firearms therein. Violation of this Ordinance would constitute a Class 1 Misdemeanor.

Since July 1, 2020, several Virginia localities have adopted similar Ordinances to restrict the possession of firearms in public buildings and areas. These localities include the Cities of Alexandria, Charlottesville, and Richmond, and the Counties of Arlington and Fairfax. Several other localities are currently considering similar legislation.

BUDGET IMPACT:
This proposed Ordinance does not involve budgetary impacts.

OPTIONS:
Council may approve, reject, or modify the proposed Ordinance.

RECOMMENDATION:
Staff has no recommendation at this time.

REVIEW:

John Piper, Chief of Police	Approved - Jan 07 2021
Melisa Michelsen, City Attorney	Approved - Jan 07 2021
Dan Hoffman, City Manager	Approved - Jan 07 2021

MEETING HISTORY:

January 12, 2021 City Council Work Session
Motion to forward O-2021-1 to the January 26, 2021 City Council Regular Meeting.
RESULT: Approved to Forward
MOVER:Councilor McKiernan
SECONDER:Vice-Mayor Hill
AYES: Councilor Bell, Vice-President Clark, Councilor Herbstritt, Vice-Mayor Hill, Councilor McKiernan, Councilor Milstead, and Mayor Smith, Jr.
NAYS:Councilor Sullivan and Councilor Veach

January 26, 2021 City Council Regular Meeting
Agenda - First Reading

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 day of 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 day of .

AN ORDINANCE TO AMEND CHAPTER 16 OF THE WINCHESTER CITY CODE ADDING SECTION 16-34 PERTAINING TO POSSESSING, CARRYING, OR TRANSPORTING FIREARMS IN CERTAIN PUBLIC PLACES

WHEREAS, Virginia Code § 15.2-915(E) authorizes the City to prohibit the possession, carrying, or transportation of firearms or ammunition in certain public places, and enact reasonable measures to prevent unauthorized access to such places by persons in possession of firearms; and,

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

NOW THEREFORE BE IT ORDAINED, that the Common Council of the City of Winchester, Virginia does hereby amend Chapter 16 of the Winchester City Code to adopt and enact Section 16-34 to state as follows:

CHAPTER 16 - OFFENSES - MISCELLANEOUS

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

(a) 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;
2. Any public park owned or operated by the City, or by any authority or local governmental entity created or controlled by the City;
3. Any recreation or community center facility operated by the City, or by any authority or local governmental entity created or controlled by the City;
4. 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.

(b) 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.

(c) 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 owned 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.

(d) 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.

(e) 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.

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

Ordinance No. O-2021-1

ADOPTED by the Common Council of the City of Winchester on this day of .

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

Kerri A. Mellott
Deputy Clerk of the Common Council

AFFIDAVIT OF VIRGINIA CITIZENS DEFENSE LEAGUE

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF WINCHESTER

VIRGINIA CITIZENS DEFENSE LEAGUE,

GUN OWNERS OF AMERICA, INC.,

GUN OWNERS FOUNDATION,

U.S. LAW SHIELD OF VIRGINIA, INC.,

MARK STICKLEY,

LOREN WILKERSON,

BRANDON ANGEL,

STONEWALL ARMS,

and

SHANNON NUCKOLS,

PLAINTIFFS,

CASE NO. _____

v.

THE CITY OF WINCHESTER,

JOHN PIPER,
(In his Official Capacity as Chief of Police)
Rouss City Hall
16 North Cameron Street
Winchester, Virginia 22601),

DEFENDANTS.

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

1. I, Philip Van Cleave, am the current President for Virginia Citizens Defense League (VCDL), and am authorized to testify on behalf of VCDL for matters set forth in this declaration.
2. I have personal knowledge of the facts stated herein, have reviewed the Complaint for Declaratory Relief, Application for Temporary and Permanent Injunction, and Petition for Writ of Mandamus and if called as a witness could competently testify thereto.
3. VCDL is a Virginia non-stock corporation, with its principal place of business in Newington, Virginia
4. VCDL is organized and operated as a non-profit civic league that is exempt from federal income taxes under Section 501(c)(4) of the U.S. Internal Revenue Code.
5. VCDL has tens of thousands of members and supporters, including many within this jurisdiction, and operates as a non-profit, non-partisan, grassroots organization dedicated to advancing the fundamental human rights of all Virginians to keep and bear arms as guaranteed by Article I, § 13 of the Constitution of the Commonwealth of Virginia.
6. VCDL in the past has organized a public Second Amendment sanctuary meeting in Winchester, at which many members carried firearms, but will be unable to do so in the future because of the challenged ordinance.
7. VCDL wishes in the future to organize, on behalf of their members, public meetings in Winchester where supporters, otherwise lawfully carrying firearms

gather for the purposes of organizing Second Amendment advocacy, but would be prohibited from doing so by the challenged ordinance.

8. Due to the ordinance imposed by the City of Winchester, VCDL cannot lawfully hold such an event where members carry firearms.

9. In addition to the harms to VCDL as an organization, numerous VCDL members and supporters wish to otherwise lawfully carry firearms in Winchester public parks, in buildings and other places that may be construed as community event centers, and at permitted events in Winchester, or events otherwise requiring a permit, but for the challenged ordinance.

10. VCDL, together with its members and supporters, is being irreparably harmed by the challenged ordinance which prohibits the constitutionally protected activity above.

11. I certify under penalty of perjury that the foregoing is true and correct.

Philip Van Cleave (SEAL)

RICHARD L MARSHALL
NOTARY PUBLIC 7562486
COMMONWEALTH OF VIRGINIA
MY COMMISSION EXPIRES SEPTEMBER 30, 2021

COMMONWEALTH OR STATE OF Virginia
CITY/COUNTY OF Chesterfield, to-wit:

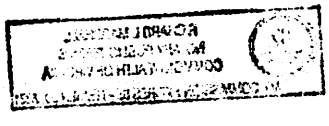
I, Richard L. Marshall, a Notary Public in and for the State and County aforesaid, do hereby certify that Philip Van Cleave, whose name is signed to the foregoing Affidavit this 16th day of April, 2021, has this day personally appeared and acknowledged the same before me after sufficient proof of identity.

Given under my hand this 16th day of April 2021.

Richard L. Marshall
Notary Public

My commission expires: September 30, 2021

Registration #: 7S624810



AFFIDAVIT OF GUN OWNERS OF AMERICA, INC

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF WINCHESTER

VIRGINIA CITIZENS DEFENSE LEAGUE,

GUN OWNERS OF AMERICA, INC.,

GUN OWNERS FOUNDATION,

U.S. LAW SHIELD OF VIRGINIA, INC.,

MARK STICKLEY,

LOREN WILKERSON,

BRANDON ANGEL,

STONEWALL ARMS,

and

SHANNON NUCKOLS,

PLAINTIFFS,

CASE NO. _____

v.

THE CITY OF WINCHESTER,

JOHN PIPER,
(In his Official Capacity as Chief of Police)
Rouss City Hall
16 North Cameron Street
Winchester, Virginia 22601),

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, Erich Pratt, who being first duly sworn, gave oath to the best of the affiant's belief, knowledge, and intentions as follows:

1. I, Erich Pratt, am the current Senior Vice President for Gun Owners of America, and am authorized to testify on behalf of Gun Owners of America for matters set forth in this declaration.
2. I have personal knowledge of the facts stated herein, have reviewed the Complaint for Declaratory Relief, Application for Temporary and Permanent Injunction, and Petition for Writ of Mandamus and if called as a witness could competently testify thereto.
3. Gun Owners of America is a California non-stock corporation with its principal place of business in Virginia, at 8001 Forbes Place, Suite 202, Springfield, VA 22151.
4. Gun Owners of America operates as a nonprofit organization exempt from federal income taxes under section 501(c)(4) of the Internal Revenue Code.
5. Gun Owners of America has over 2 million members and supporters nationwide, including tens of thousands of members within the Commonwealth of Virginia, many of whom reside in the Commonwealth of Virginia, including within this jurisdiction.
6. The principal mission of Gun Owners of America is to preserve and defend the rights of gun owners.
7. Gun Owners of America wishes to preserve the rights of Virginia residents, including its members and supporters, who wish to otherwise lawfully carry firearms to defend themselves in Winchester city parks, community centers, and at

permitted events, or events otherwise requiring a permit, and in the areas adjacent to permitted events and events otherwise requiring a permit.

8. But for the challenged ordinance, Gun Owners of America's members and supporters would "bear" arms in public for self-defense and are being irreparably harmed by the challenged ordinance which prohibits this constitutionally protected activity.

9. I certify under penalty of perjury that the foregoing is true and correct.

Erich Pratt

DocuSigned by:
Erich Pratt
9FA6867FC78B4E0...
(SEAL)

COMMONWEALTH OR STATE OF Virginia
CITY/COUNTY OF Richmond, to-wit:

I, Tytesha Davis Aviles, a Notary Public in and for the State and County aforesaid, do hereby certify that Erich Pratt, whose name is signed to the foregoing Affidavit this 20th day of April, 2021, has this day personally appeared and acknowledged the same before me after sufficient proof of identity.

Given under my hand this 20th day of April 2021.

DocuSigned by:
Tytesha Davis Aviles
FD147B8D032147E...
Notary Public

My commission expires: October 31, 2024

Registration #: 7891498

TYTESHA DAVIS AVILES
Electronic Notary Public
Commonwealth of Virginia
Registration No. 7891498
My Commission Expires Oct 31, 2024

AFFIDAVIT OF GUN OWNERS FOUNDATION

V I R G I N I A:

IN THE CIRCUIT COURT FOR THE CITY OF WINCHESTER

VIRGINIA CITIZENS DEFENSE LEAGUE,

GUN OWNERS OF AMERICA,

GUN OWNERS FOUNDATION,

U.S. LAW SHIELD OF VIRGINIA, INC.,

LOREN WILKERSON,

STONEWALL FIREARMS,

BRANDON ANGEL,

SHANNON NUCKOLS,

and

MARK STICKLEY Case No.:

PLAINTIFFS,

v.

THE CITY OF WINCHESTER,

and,

JOHN PIPER, 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, Erich Pratt, who being first duly sworn, gave oath to the best of the affiant's belief, knowledge, and intentions as follows:

1. I, Erich Pratt, am the Senior Vice President for Gun Owners Foundation, and am authorized to testify on behalf of Gun Owners Foundation for matters set forth in this declaration.

2. I have personal knowledge of the facts stated herein, have reviewed the Complaint for Declaratory Relief, Application for Temporary and Permanent Injunction, and Petition for Writ of Mandamus and if called as a witness could competently testify thereto.

3. Gun Owners Foundation is a Virginia non-stock corporation with its principal place of business in Virginia at 8001 Forbes Place, Springfield, VA 22151.

4. Gun Owners Foundation is organized and operated as a nonprofit legal defense and educational foundation that is exempt from federal income taxes under § 501(c)(3) of the Internal Revenue Code.

5. Gun Owners Foundation is supported by gun owners from across the country, including thousands of Virginia residents, several in this jurisdiction.

6. Gun Owners Foundation wishes to preserve the rights of citizens, including its supporters, who wish to otherwise lawfully carry firearms to and defend themselves in Winchester city parks, community centers, and at permitted events, or events otherwise requiring a permit, and in the areas adjacent to permitted events and events otherwise requiring a permit.

7. But for the challenged ordinance, Gun Owners Foundation supporters would "bear" arms in public for self-defense, and are being irreparably harmed by the challenged ordinance which prohibits this constitutionally protected activity.

8. I certify under penalty of perjury that the foregoing is true and correct.

Erich Pratt

DocuSigned by:
Erich Pratt
9FA6867FC78B4E0...

(SEAL)

COMMONWEALTH OR STATE OF Virginia
CITY/COUNTY OF Richmond, to-wit:

I, Tytesha Davis Aviles, a Notary Public in and for the State and County aforesaid, do hereby certify that Erich Pratt, whose name is signed to the foregoing Affidavit this 20th day of April, 2021, has this day personally appeared and acknowledged the same before me after sufficient proof of identity.

Given under my hand this 20th day of April 2021.

DocuSigned by:
Tytesha Davis Aviles
FD147B8B032147E...
Notary Public

My commission expires: October 31, 2024

Registration #: 7891498

TYTESHA DAVIS AVILES
Electronic Notary Public
Commonwealth of Virginia
Registration No. 7891498
My Commission Expires Oct 31, 2024

AFFIDAVIT OF U.S. LAW SHIELD OF VIRGINIA, INC.

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF WINCHESTER

VIRGINIA CITIZENS DEFENSE LEAGUE,

GUN OWNERS OF AMERICA, INC.,

GUN OWNERS FOUNDATION,

U.S. LAW SHIELD OF VIRGINIA, INC.,

MARK STICKLEY,

LOREN WILKERSON,

BRANDON ANGEL,

STONEWALL ARMS,

and

SHANNON NUCKOLS,

PLAINTIFFS,

CASE NO. _____

v.

THE CITY OF WINCHESTER,

JOHN PIPER,
(In his Official Capacity as Chief of Police)
Rouss City Hall
16 North Cameron Street
Winchester, Virginia 22601),

DEFENDANTS.

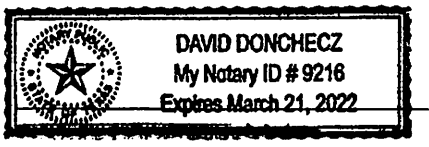
AFFIDAVIT

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

1. I, Randy Macchi, am the current General Counsel and Chief Operating Officer for U.S. LawShield of Virginia and am authorized to testify on behalf of U.S. LawShield of Virginia for matters set forth in this declaration.
2. I have personal knowledge of the facts stated herein, have reviewed the Complaint for Declaratory Relief, Application for Temporary and Permanent Injunction, and Petition for Writ of Mandamus and if called as a witness could competently testify thereto.
3. As General Counsel and Chief Operating of U.S. LawShield of Virginia I am authorized to act on behalf of the organization.
4. U.S. LawShield of Virginia is a pro-firearms organization that seeks to protect the firearm rights of its members.
5. U.S. LawShield of Virginia has thousands of members within the Commonwealth of Virginia, with dozens of members located in Winchester Virginia.
6. U.S. LawShield of Virginia, wishes to preserve the rights of Virginia residents, including its members, who wish to otherwise lawfully carry firearms to defend themselves in Winchester city parks, community centers, and at permitted events, or events otherwise requiring a permit, and in the areas adjacent to permitted events and events otherwise requiring a permit.
7. But for the challenged ordinance, U.S. LawShield of Virginia's members and supporters would "bear" arms in public for self-defense, and are being irreparably

harmed by the challenged ordinance which prohibits this constitutionally protected activity.

8. I certify under penalty of perjury that the foregoing is true and correct.



(SEAL)

COMMONWEALTH OR STATE OF Texas
CITY/COUNTY OF Harris, to-wit:

I, David Donchecz, a Notary Public in and for the State and County aforesaid, do hereby certify that Randy Macchi, whose name is signed to the foregoing Affidavit this 16 day of April, 2021, has this day personally appeared and acknowledged the same before me after sufficient proof of identity.

Given under my hand this 16 day of April 2021.

Notary Public

My commission expires: 3-21-2022

Registration #: 9216

AFFIDAVIT OF MARK STICKLEY

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF WINCHESTER

VIRGINIA CITIZENS DEFENSE LEAGUE,

GUN OWNERS OF AMERICA, INC.,

GUN OWNERS FOUNDATION,

U.S. LAW SHIELD OF VIRGINIA, INC.,

MARK STICKLEY,

LOREN WILKERSON,

BRANDON ANGEL,

STONEWALL ARMS,

and

SHANNON NUCKOLS,

PLAINTIFFS,

CASE NO. _____

v.

THE CITY OF WINCHESTER,

JOHN PIPER,
(In his Official Capacity as Chief of Police)
Rouss City Hall
16 North Cameron Street
Winchester, Virginia 22601),

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 B. 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 on the Loudoun Street walking mall in Old Town Winchester.
2. I regularly use the walking mall on Loudoun Street as a source of ingress and egress from my business.
3. I am lawfully able to possess a firearm and have a current Concealed Handgun Permit.
4. At times I fear for my safety, and therefore desire to carry a firearm with me to protect myself, and should the need arise, protect my employees.
5. I am currently unsure during what times, and in what portions of the walking mall and streets surrounding my business firearms, firearm components, and ammunition are prohibited.
6. My business is generally open to the public during business hours, and I therefore fear that my business may constitute an area of "whatever nature that is open to the public," such that firearms may be prohibited inside my business when it is adjacent to a permitted event area, or an event which would otherwise require a permit.
7. I fear that I may arrive at work lawfully able to carry my firearm and ammunition with me, but may leave work subject to arrest, should I exit with my firearm, or even simply with a shell casing in my pocket during a time when an event outside my work has begun.

Mark B. Stickley (SEAL)

COMMONWEALTH ~~OR STATE~~ OF Virginia

CITY/~~COUNTY~~ OF Winchester, to-wit:

I, Susan E. Franks, 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 12th day of April, 2021, has this day personally appeared and acknowledged the same before me after sufficient proof of identity.

Given under my hand this 12th day of April 2021.

Susan E Franks
Notary Public

My commission expires: May 31, 2025

Registration #: 184191

SUSAN E. FRANKS
NOTARY PUBLIC
REG # 184191
COMMISSION EXPIRES 5/31/25
COMMONWEALTH OF VIRGINIA

AFFIDAVIT OF LOREN WILKERSON

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF WINCHESTER

VIRGINIA CITIZENS DEFENSE LEAGUE,

GUN OWNERS OF AMERICA, INC.,

GUN OWNERS FOUNDATION,

U.S. LAW SHIELD OF VIRGINIA, INC.,

MARK STICKLEY,

LOREN WILKERSON,

BRANDON ANGEL,

STONEWALL ARMS,

and

SHANNON NUCKOLS,

PLAINTIFFS,

CASE NO. _____

v.

THE CITY OF WINCHESTER,

JOHN PIPER,
(In his Official Capacity as Chief of Police)
Rouss City Hall
16 North Cameron Street
Winchester, Virginia 22601),

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, Loren Wilkerson, who being first duly sworn, gave oath to the best of the affiant's belief, knowledge, and intentions as follows:

1. I, Loren Wilkerson, reside in Winchester, Virginia.
2. I am lawfully able to possess firearms and have a current valid Virginia Concealed Handgun Permit.
3. I am a mother to three children, and carry a firearm with me regularly to protect myself and my children.
4. I believe that I am best situated to be my own defender for myself and my family and believe that a lawfully concealed firearm is the best tool with which I can defend myself and my loved ones.
5. Prior to enactment of Winchester City Ordinance § 16-34 I regularly carried a firearm with me when taking my three children to Winchester city parks.
6. I desire to lawfully carry a firearm in Winchester city parks without fear of arrest.
7. Prior to enactment of Winchester City Ordinance §16-34 I regularly carried a firearm into buildings in Winchester City parks which may be construed as City recreation centers.
8. I desire to lawfully carry a firearm in buildings in Winchester which may be considered community event centers to protect myself and my family.
9. I carry a firearm with me to protect myself and my family when shopping in Winchester, Virginia.
10. I fear arrest should I carry a firearm at an event in Winchester, Virginia which requires a permit.

11. I fear arrest if I carry a firearm into Winchester, Virginia city parks or community event centers.

Loren Wilkerson (SEAL)

COMMONWEALTH ~~OR STATE~~ OF Virginia
CITY/~~COUNTY~~ OF Winchester, to-wit:

I, Susan E. Franks, a Notary Public in and for the State and County aforesaid, do hereby certify that Loren Wilkerson, whose name is signed to the foregoing Affidavit this 12th day of April, 2021, has this day personally appeared and acknowledged the same before me after sufficient proof of identity.

Given under my hand this 12th day of April 2021.

Susan E Franks
Notary Public

My commission expires: May 31, 2025

Registration #: 184191

SUSAN E. FRANKS
NOTARY PUBLIC
REG # 184191
COMMISSION EXPIRES
5/31/25
COMMONWEALTH OF VIRGINIA

AFFIDAVIT OF BRANDON ANGEL

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF WINCHESTER

VIRGINIA CITIZENS DEFENSE LEAGUE,

GUN OWNERS OF AMERICA, INC.,

GUN OWNERS FOUNDATION,

U.S. LAW SHIELD OF VIRGINIA, INC.,

MARK STICKLEY,

LOREN WILKERSON,

BRANDON ANGEL,

STONEWALL ARMS,

and

SHANNON NUCKOLS,

PLAINTIFFS,

CASE NO. _____

v.

THE CITY OF WINCHESTER,

JOHN PIPER,
(In his Official Capacity as Chief of Police)
Rouss City Hall
16 North Cameron Street
Winchester, Virginia 22601),

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, Brandon Angel, who being first duly sworn, gave oath to the best of the affiant's belief, knowledge, and intentions as follows:

1. I, Brandon Angel, reside in Kearneysville, West Virginia.
2. I am a current member of Gun Owners of America and Virginia Citizens Defense League.
3. I am lawfully able to possess firearms, have a valid West Virginia Concealed Pistol License and regularly carry a firearm when I visit Virginia.
4. I desire to carry a firearm when I visit Winchester Virginia city parks and permitted events located within Winchester.
5. I was active in organizing the Second Amendment Sanctuary movement in Winchester Virginia, and in the future wish to obtain a permit to hold a Second Amendment rally, at which I desire to open carry a firearm in a lawful manner.
6. I fear arrest should I carry a firearm at an event in Winchester Virginia which requires a permit.
7. I fear arrest if I carry a firearm into Winchester Virginia city parks.
8. But for the challenged ordinance, I would "bear" arms in public for self-defense, and am being irreparably harmed by the challenged ordinance which prohibits this constitutionally protected activity.
9. I certify under penalty of perjury that the foregoing is true and correct.

_____(SEAL)

COMMONWEALTH OR STATE OF Virginia
CITY/~~COUNTY~~ OF Winchester, to-wit:

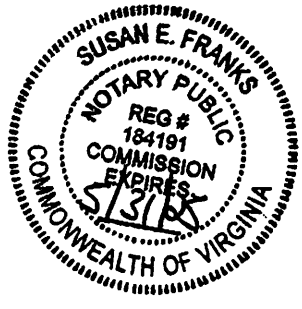
I, Susan E. Franks, a Notary Public in and for the State and County aforesaid, do hereby certify that Brandon, Angel, whose name is signed to the foregoing Affidavit this 20th day of April, 2021, has this day personally appeared and acknowledged the same before me after sufficient proof of identity.

Given under my hand this 20th day of April 2021.

Susan E. Franks
Notary Public

My commission expires: May 31, 2025

Registration #: 184191



AFFIDAVIT OF STONEWALL ARMS

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF WINCHESTER

VIRGINIA CITIZENS DEFENSE LEAGUE,

GUN OWNERS OF AMERICA, INC.,

GUN OWNERS FOUNDATION,

U.S. LAW SHIELD OF VIRGINIA, INC.,

MARK STICKLEY,

LOREN WILKERSON,

BRANDON ANGEL,

STONEWALL ARMS,

and

SHANNON NUCKOLS,

PLAINTIFFS,

CASE NO. _____

v.

THE CITY OF WINCHESTER,

JOHN PIPER,
(In his Official Capacity as Chief of Police)
Rouss City Hall
16 North Cameron Street
Winchester, Virginia 22601),

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, Andrew John Williams, who being first duly sworn, gave oath to the best of the affiant's belief, knowledge, and intentions as follows:

1. I, Andrew John Williams, reside in Frederick County, Virginia.
2. I am the current General Manager of Stonewall Arms, LLC, located in Winchester Virginia, and I have the power to direct the actions of Stonewall Arms, and am lawfully able to testify on behalf of Stonewall Arms, LLC.
3. Stonewall Arms, LLC is a federally licensed firearms dealer, with a current Federal Firearms License (FFL).
4. I am lawfully able to possess firearms and have a current valid Virginia Concealed Handgun Permit.
5. Prior to enactment of Winchester City Ordinance § 16-34 I regularly transported firearms, ammunition, and components of firearms or ammunition through the City of Winchester during the regular course of business for Stonewall Arms.
6. I now fear arrest and prosecution if I carry a firearm, ammunition, or firearm or ammunition components through Winchester, as I am unsure of where and when such items may be prohibited as adjacent to a permitted event, or adjacent to an event otherwise requiring a permit.
7. But for the challenged ordinance, I would engage in the constitutionally protected "bearing" and transport of firearms, ammunition, and components of firearms and ammunition through Winchester past permitted events and am being irreparably harmed by the challenged ordinance which prohibits this activity.

8. I certify under penalty of perjury that the foregoing is true and correct.

_____(SEAL)

COMMONWEALTH OR STATE OF Winchester City
CITY/COUNTY OF Virginia, to-wit:

I, Sylvia White, a Notary Public in and for the State and County aforesaid, do hereby certify that Andrew Williams, whose name is signed to the foregoing Affidavit this 19th day of April, 2021, has this day personally appeared and acknowledged the same before me after sufficient proof of identity.

Given under my hand this 19 day of April 2021.

_____
Notary Public

My commission expires: 4.30.23

Registration #: 7827198

SYLVIA WHITE
NOTARY PUBLIC
REG. #7827198
MY COMMISSION EXPIRES
4/30/2023
COMMONWEALTH OF VIRGINIA

AFFIDAVIT OF SHANNON NUCKOLS

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF WINCHESTER

VIRGINIA CITIZENS DEFENSE LEAGUE,

GUN OWNERS OF AMERICA, INC.,

GUN OWNERS FOUNDATION,

U.S. LAW SHIELD OF VIRGINIA, INC.,

MARK STICKLEY,

LOREN WILKERSON,

BRANDON ANGEL,

STONEWALL ARMS,

and

SHANNON NUCKOLS,

PLAINTIFFS,

CASE NO. _____

v.

THE CITY OF WINCHESTER,

JOHN PIPER,
(In his Official Capacity as Chief of Police)
Rouss City Hall
16 North Cameron Street
Winchester, Virginia 22601),

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, Shannon Nuckles, who being first duly sworn, gave oath to the best of the affiant's belief, knowledge, and intentions as follows:

1. I, Shannon Nuckles, reside in Frederick County, Virginia.
2. I am the owner of a food truck called the Mac Shack Express.
3. I am lawfully able to possess firearms and have a current valid Virginia Concealed Handgun Permit.
4. I have previously been the victim of a robbery, and due to the nature of my business often have large sums of cash on my person and in my food truck.
5. I am often one of the last ones to close up and leave a festival, and often am leaving with large sums of money when few other people are around.
6. Prior to Covid-19 concerns in 2020, I obtained permits and attended, with my business, several festivals, such as the Shenandoah Apple Blossom festival which constitute permitted events.
7. I also have lawfully positioned my food truck business at events in Winchester city parks to sell food in the past.
8. I desire in the future to attend permitted events, and events in Winchester city parks with my food truck.
9. I desire to carry a firearm with me in my food truck while I work to defend myself and my customers.
10. I now fear arrest if I carry a firearm with me in my food truck to defend myself at certain permitted events, and at locations inside Winchester city parks.

(SEAL)

COMMONWEALTH OR ~~STATE~~ OF Virginia
CITY/~~COUNTY~~ OF Winchester, to-wit:

I, Susan E. Franks, a Notary Public in and for the State and County aforesaid, do hereby certify that Shannon Nuckols, whose name is signed to the foregoing Affidavit this 13th day of April, 2021, has this day personally appeared and acknowledged the same before me after sufficient proof of identity.

Given under my hand this 13th day of April 2021.

Notary Public

My commission expires: May 31, 2025

Registration #: 184191

SUSAN E. FRANKS NOTARY PUBLIC REG # 184191 COMMISSION EXPIRES 5/31/25 COMMONWEALTH OF VIRGINIA