



COMMONWEALTH of VIRGINIA

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The Honorable Michael J. Webert
Virginia House of Delegates
General Assembly Building, Room 714
201 North 9th Street
Richmond, Virginia 23219

Dear Delegate Webert:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issue Presented

You ask whether the Second Amendment to the United States Constitution and Article I, Section 13 of the Constitution of Virginia prohibit (1) a licensure requirement to purchase a firearm and (2) a ban of commonly used firearms and related accessories and components.

Response

It is my opinion that each of these measures would violate the right of Virginians to keep and bear arms as enshrined in the Second Amendment to the United States Constitution and Article I, Section 13 of the Constitution of Virginia because there is no history or tradition of these sorts of regulations in our nation.

Applicable Law and Discussion

The Second Amendment provides that “[a] well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.”¹ The Supreme Court of the United States has repeatedly explained that the Second Amendment—fully applicable to the States through the Fourteenth Amendment²—protects “an individual right to keep and bear arms for self-defense,”³ which is not “a second-class right, subject to an entirely different body of rules than the other Bill of Rights guarantees.”⁴ Further, that right protects Americans’ ability to keep and bear arms that are “in common use,”⁵ including for self-defense “outside the home.”⁶ Article I, Section 13 of the Constitution

¹ U.S. CONST. amend. II.

² *McDonald v. City of Chicago*, 561 U.S. 742 (2010).

³ *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1, 17 (2022).

⁴ *McDonald*, 561 U.S. at 780; *see also* *District of Columbia v. Heller*, 554 U.S. 570, 592 (2008) (holding that the Second Amendment “guarantee[s] the individual right to possess and carry weapons in case of confrontation”).

⁵ *Heller*, 554 U.S. at 627 (first citing 4 W. BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND *148–49 (1769); then quoting *United States v. Miller*, 307 U.S. 174, 179 (1939)).

⁶ *Bruen*, 597 U.S. at 10.

of Virginia likewise provides that “the right of the people to keep and bear arms shall not be infringed” and adds that “the body of the people, trained to arms, is the proper, natural, and safe defense of a free state.”⁷

To justify any restriction on the fundamental rights protected by the Second Amendment, the government must show the restriction does not contradict “the Second Amendment’s unqualified command.”⁸ Thus, “[w]hen the Second Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that conduct.”⁹ A proponent of an arms regulation must “demonstrat[e]” that the regulation “is consistent with the Nation’s historical tradition of firearm regulation” before “a court [may] conclude” that the regulation is permissible.¹⁰ Finally, the historical analogue must clearly match the regulation being defended—“[e]ven when a law regulates arms-bearing for a permissible reason, . . . it may not be compatible with the right if it does so to an extent beyond what was done at the founding.”¹¹ If a regulation’s proponent cannot point to a “distinctly similar” historical analogue, then the challenged regulation “is inconsistent with the Second Amendment.”¹²

Because history supports neither a licensure requirement to purchase a firearm nor a ban of commonly used firearms and related accessories and components, such measures violate the constitutional rights of Virginians.

I. Law-abiding Virginians may not be subjected to a licensure requirement to purchase firearms.

The Second Amendment’s right to keep and bear arms covers the right to purchase arms.¹³ A legislature may not, “under the pretence of regulating,” enact legislation that seeks, in its effect, “a destruction of [that] right.”¹⁴ Nor may a legislature raise barriers aimed at limiting the exercise of a constitutional right, like “impos[ing] a charge for the enjoyment of a right granted by the Federal Constitution.”¹⁵

As explained in *Heller* and reiterated in *Bruen*, “when the Second Amendment’s plain text covers an individual’s conduct, the Constitution presumptively protects that conduct.”¹⁶ Individuals may forfeit their right to keep and bear arms only in limited circumstances that have historical analogues at the founding.¹⁷ For example, both at the founding and today, “[w]hen an individual poses a clear threat of physical violence to another, the threatening individual may be disarmed.”¹⁸

⁷ VA. CONST. art. I, § 13.

⁸ *Bruen*, 597 U.S. at 17 (quotation omitted).

⁹ *Id.* at 24.

¹⁰ *Id.*

¹¹ *United States v. Rahimi*, 602 U.S. 680, 692 (2024).

¹² *Bruen*, 597 U.S. at 26.

¹³ *Reese v. Bureau of Alcohol, Tobacco, Firearms, & Explosives*, 127 F.4th 583, 590 (5th Cir. 2025).

¹⁴ *Heller*, 554 U.S. at 629 (quoting *State v. Reid*, 1 Ala. 612, 616 (1840)).

¹⁵ *Murdock v. Pennsylvania*, 319 U.S. 105, 113 (1943); *see also Blue Island v. Kozul*, 41 N.E.2d 515, 519 (Ill. 1942) (holding that a person cannot be compelled “to purchase, through a license fee or a license tax, the privilege freely granted by the constitution”).

¹⁶ *Bruen*, 597 U.S. at 17.

¹⁷ *Rahimi*, 602 U.S. at 692.

¹⁸ *Id.* at 698.

The historical record demonstrates that the founding generation was acutely aware of officials using pretextual methods to disarm the populace and ratified the Second Amendment to prevent similar abridgements of the right to bear arms in the United States.¹⁹ St. George Tucker, for example, noted that “[i]n England, the people have been disarmed, generally, under the specious pretext of preserving the game.”²⁰ And the Commonwealth demanded that only persons facing insidious discrimination as a result of slavery need a license to carry a. Even free Black Virginians were prohibited from “keep[ing] or carry[ing] any fire-lock of any kind, any military weapon, or any powder or lead, without first obtaining a license from the court of the county or corporation in which he resides, which license may, at any time, be withdrawn by an order of such court.”²¹

Although the Supreme Court in *Bruen* approved of “shall-issue” licensing requirements for public carry—under which authorities “must issue concealed-carry licenses whenever applicants satisfy certain threshold requirements”²²—a licensing requirement to purchase firearms is a far more burdensome restriction than a simple license to carry in public.²³ “[V]ery few” historical licensing restrictions “applied to all guns, all people, or all places, much less all three.”²⁴ Indeed, the Court in *Bruen* noted that “any permitting scheme can be put toward abusive ends” and therefore did not “rule out” that a licensure requirement might, in effect, substantially infringe on “the[] right to public carry.”²⁵

It is my opinion that a licensure requirement to purchase firearms is unconstitutional because it would substantially interfere with the rights of Virginians to keep and bear arms enshrined in the Second Amendment and Article I, Section 13 of the Constitution of Virginia.

II. Because only “dangerous and unusual weapons” may be banned, weapons and accessories to those weapons “in common use” are constitutionally protected.

The Second Amendment ensures that citizens may keep and bear arms “in common use.”²⁶ In keeping with the nation’s historical regulation of weapons, the Second Amendment permits banning only “dangerous and unusual weapons.”²⁷ By the plain meaning of the terms, those categories are mutually exclusive—a weapon cannot be both “common” and “unusual.”²⁸ That some weapons might be more modern than others is irrelevant because “the Second Amendment extends, *prima facie*, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding.”²⁹

¹⁹ *Heller*, 554 U.S. at 606–07.

²⁰ 1 ST. GEORGE TUCKER, BLACKSTONE’S COMMENTARIES App. 300 (1803); *see also* 2 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 412 (10th ed. 1787) (“[D]isarming the bulk of the people . . . is a reason oftner meant, than avowed, by the makers of forest or game laws.”).

²¹ 1 Revised Code of the Laws of Virginia: Being a Collection of All Such Acts of the General Assembly, of a Public and Permanent Nature, as are Now in Force; with a General Index 423 (1819) (Act of March 2, 1819).

²² *Bruen*, 597 U.S. at 13.

²³ *Bruen*, 597 U.S. at 38 n.9 & 39.

²⁴ *Ortega v. Grisham*, 148 F.4th 1134, 1152 (10th Cir. 2025).

²⁵ *Bruen*, 597 U.S. at 38 n.9.

²⁶ *Heller*, 554 U.S. at 627.

²⁷ *Bruen*, 597 U.S. at 47 (quoting *Heller*, 554 U.S. at 627).

²⁸ Compare *Common*, MERRIAM-WEBSTER (accessed Jan. 15, 2026), <https://tinyurl.com/hpxb9mp2> (defined as “occurring or appearing frequently”), *with Unusual*, BLACK’S LAW DICTIONARY (12th ed. 2024) (defined as “[e]xtrordinary; abnormal” or “[d]ifferent from what is reasonably expected”).

²⁹ *Heller*, 554 U.S. at 582.

AR-15 rifles, for instance, “are both widely legal and owned by many ordinary citizens.”³⁰ Indeed, “[t]he AR-15 is the most popular rifle in the country.”³¹ Americans own “20 to 30 million AR-15s . . . [a]nd AR-15s are legal in 41 of the 50 States, meaning that the States . . . that prohibit AR-15s are something of an outlier.”³² Approximately 2.8 million of those rifles entered the market in 2020 alone, comprising around 20% of all firearms sold that year.³³ “For context, this means that there are more AR-style rifles in the civilian market than there are Ford F-Series pickup trucks on the road—the most popular truck in America.”³⁴ Those weapons therefore are in common use and cannot be banned.

The same constitutional protection extends to firearms accessories and components such as magazines of certain capacities, grips, muzzle devices, and stocks. “The 18th-century meaning [of ‘arms’] is no different from the meaning today”; the definition includes “[w]eapons of offence, or armour of defence.”³⁵ Magazines are particularly inseparable from and essential to the function of the majority of modern firearms, which are magazine-fed.³⁶ And so-called “large capacity magazines” are “in common use.”³⁷ In fact, “in the realm of firearms,” magazines holding more than ten rounds “are possibly the most commonly owned thing in America,” numbering “over one hundred million.”³⁸ In particular, handguns are commonly produced with factory magazine sizes of more than 15 rounds, and rifles with magazine sizes of 30 rounds.³⁹ Because these types of arms are “in common use,” a regulation banning them “has no historical pedigree and it is arbitrary and capricious[:] [i]t is extreme.”⁴⁰ Moreover, removing or restricting access to magazines or other important pieces of firearms would render them useless for “immediate self-defense,” which is “the core lawful purpose” of the Second Amendment.⁴¹

Finally, even if the Second Amendment did not extend protection to these types of weapons, the Constitution of Virginia does. Article I, Section 13 of the Constitution of Virginia repeats the Second Amendment’s admonition that “the right of the people to keep and bear arms shall not be infringed” and

³⁰ *Smith & Wesson Brands, Inc. v. Estados Unidos Mexicanos*, 605 U.S. 280, 297 (2025); *see also Delaware State Sportsmen’s Ass’n, Inc. v. Delaware Dep’t of Safety & Homeland Sec.*, 664 F. Supp. 3d 584, 594 (D. Del. 2023), aff’d, 108 F.4th 194 (3d Cir. 2024), cert. denied sub nom. *Gray v. Jennings*, 145 S. Ct. 1049 (2025) (“[A]ssault long guns are indeed ‘in common use’ for several lawful purposes, including self-defense.”); *Heller*, 554 U.S. at 627.

³¹ *Smith & Wesson*, 605 U.S. at 297 (citing See T. Gross, *How the AR-15 Became the Bestselling Rifle in the U.S.*, NPR (Apr. 20, 2023)); *see also Harrel v. Raoul*, 144 S. Ct. 2491, 2493 (2024) (Thomas, J., statement respecting the denial of certiorari) (calling the AR-15 “America’s most common civilian rifle”).

³² *Snope v. Brown*, 145 S. Ct. 1534 (2025) (statement of Kavanaugh, J.).

³³ Cong. Rsch. Serv., *House-Passed Assault Weapons Ban of 2022 (H.R. 1808)* 2 (Aug. 4, 2022).

³⁴ *Bianchi v. Brown*, 111 F.4th 438, 518 (4th Cir. 2024) (Richardson, J., dissenting).

³⁵ *Heller*, 554 U.S. at 581 (quoting Samuel Johnson, 1 *Dictionary of the English Language* 106 (4th ed.) (reprinted 1978)).

³⁶ *Association of New Jersey Rifle & Pistol Clubs, Inc. v. Attorney Gen. New Jersey*, 910 F.3d 106, 116 (3d Cir. 2018) (“Because magazines feed ammunition into certain guns, and ammunition is necessary for such a gun to function as intended, magazines are ‘arms’ within the meaning of the Second Amendment.”); *see also Delaware State Sportsmen’s Ass’n, Inc.*, 664 F. Supp. 3d at 596 (“Magazines are arms, and so are [large capacity magazines].”).

³⁷ *See Delaware State Sportsmen’s Ass’n, Inc.*, 664 F. Supp. 3d at 597.

³⁸ *Duncan v. Bonta*, 695 F. Supp. 3d 1206, 1214 (S.D. Cal. 2023), rev’d and remanded, 133 F.4th 852 (9th Cir. 2025), pet. for cert. filed Aug. 15, 2025.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Heller*, 554 U.S. at 630, 635 (explaining that requiring a firearm to be “kept inoperable” through a “trigger lock or” other means is unconstitutional).

adds that “the body of the people, trained to arms, is the proper, natural, and safe defense of a free state.”⁴² Virginia’s courts have not yet had the opportunity to analyze the effect of this additional language in Section 13,⁴³ but every part of an enactment “is presumed to have some effect and no part will be considered meaningless unless absolutely necessary.”⁴⁴ This additional clause emphasizing the importance of a population “trained to arms” for the “defense of . . . [the] state” makes clear that arms sufficient for that purpose fall under the Constitution of Virginia’s protection.

The historical record further supports that the Constitution of Virginia, even if not the Second Amendment, protects such arms. At the founding, citizens called for service in the militia “were expected to appear bearing arms supplied by themselves and of the kind in common use at the time.”⁴⁵ For example, a 1661 act required that “every man able to beare arms have in his house a fixed gun, two pound of powder and eight pound of shot at least, which are to be provided by every man for his family.”⁴⁶ Citizens were, in fact, expected to have such weapons or else face a fine.⁴⁷ In 1784—the first full year of peace after the Revolution—the General Assembly mandated that “all free male persons between the ages of eighteen and fifty,” with certain exemptions, were to be considered enrolled in the militia and were expected to provide themselves with weapons: regular militiamen were to procure “a good clean musket . . . three feet eight inches long in the barrel, with a good bayonet,” county officers were required to equip themselves “with a sword and espontoon,” and citizens near the Blue Ridge could “have good rifles with proper accouternments in lieu” of muskets.⁴⁸ If citizens did not procure arms for themselves, the local court was directed to purchase arms for them “out of the money arising from delinquents” if they were unarmed by reason of poverty.⁴⁹ The historical tradition of Virginia’s militia continues on to the present day.⁵⁰

For the above reasons, it is my opinion that the Second Amendment to the United States Constitution and Article 1, Section 13 of the Constitution of Virginia protect the right of Virginians to keep and bear so-called “assault weapons” and other arms in common use for self-defense, as well as common accessories and components to those weapons.

Conclusion

As experience has demonstrated, even the most draconian government regulations will not prevent individuals bent on destruction from obtaining and using firearms for nefarious purposes, and an unarmed,

⁴² VA. CONST. art. I, § 13.

⁴³ See DiGiacinto v. Rector & Visitors of George Mason Univ., 281 Va. 127, 134 (2011) (noting that “the protection of the right to bear arms expressed in Article I, § 13 of the Constitution of Virginia is co-extensive with the rights provided by the Second Amendment of the United States Constitution” at least as to “*all issues in the instant case*” (emphasis added)); Ginevan v. Commonwealth, 83 Va. App. 1, 15 n.8 (2024) (observing that “the Constitution of Virginia also protects the right to bear arms” but that the challenger “relie[d] exclusively on the Second Amendment”); *see generally* Stephen R. McCullough, Virginia Constitutional Law § 5.02 (2025).

⁴⁴ Davis v. MKR Dev., LLC, 295 Va. 488, 494 (2018) (quoting City of Richmond v. Virginia Elec. & Power Co., 292 Va. 70, 75 (2016)).

⁴⁵ *Miller*, 307 U.S. at 179.

⁴⁶ 2 William Waller Hening, The Statutes at Large 226 (1823).

⁴⁷ See, e.g., 1 William Waller Hening, The Statutes at Large 126 (1823).

⁴⁸ 11 William Waller Hening, The Statutes at Large 478–79 (1823).

⁴⁹ *Id.* at 479–80.

⁵⁰ See VA. CODE ANN. §§ 44-1 (2021), 44-4 (2021).

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law-abiding populace is helpless if law enforcement is slow to respond.⁵¹ Fortunately for Virginians, the United States Constitution and the Constitution of Virginia enshrine Virginians' rights to defend themselves, their families, and their fellow citizens. It is my opinion that, in addition to putting Virginians in danger, a licensure requirement to purchase firearms and a ban on commonly used firearms, accessories, and components would violate the Second Amendment to the United States Constitution and Article I, Section 13 of the Constitution of Virginia.

With kindest regards, I am

Very truly yours,



Jason S. Miyares
Attorney General

⁵¹ See Frank Chung, 'They Froze': Slow Police Response Questioned, New Zealand Herald (Dec. 14, 2025), <https://tinyurl.com/yyrprwj7>.