Defending the Foundation | Article 3 of 8 | Deep Dive

By Jeff Bayard | Virginia Christian Alliance | April 2026

# The Right to Bear Arms in Virginia: What the Constitution Actually Guarantees — and What Richmond Is About to Decide

> **A Constitutional Brief on the Second Amendment, SCOTUS Doctrine, Virginia's Statutory Regime, and HB 217**

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## Section I — Thesis & Roadmap

The Second Amendment is not a political preference. It is a constitutional guarantee — individual, pre-political, and rooted in a recognition of human dignity that predates every government that has ever attempted to qualify it. The Supreme Court has said so, with increasing clarity, across four landmark decisions spanning sixteen years. Virginia's own constitution — written before the federal Bill of Rights and in some respects more explicit — says so as well.

Yet Virginia's General Assembly has constructed a statutory regime that qualifies, conditions, and in some cases prohibits the exercise of that right in ways that sit in uneasy tension with both documents. And on April 13, 2026, Governor Gia Spanberger must decide what to do with HB 217 — a bill that would ban the sale, purchase, and transfer of so-called "assault firearms" and restrict magazine capacity to fifteen rounds.

This brief establishes the constitutional standard, builds the SCOTUS framework from *Heller* through *Rahimi*, maps Virginia's existing statutory regime, presents and refutes the strongest argument for HB 217, and closes with the biblical and constitutional bottom line: rights that come from the Creator cannot be revoked by Richmond.

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## Section II — The Constitutional Standard

> **U.S. CONSTITUTION — SECOND AMENDMENT**
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> "*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.*"
>
> constitution.congress.gov

Twenty-seven words. The operative clause — "the right of the people to keep and bear Arms, shall not be infringed" — is unqualified. The prefatory clause announces the civic purpose behind an individual right that already existed. The Founders knew how to write a limitation when they meant one. They did not write one here.

> **VIRGINIA CONSTITUTION — ARTICLE I, SECTION 13**
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> "*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; that standing armies, in time of peace, should be avoided as dangerous to liberty; and that in all cases the military should be under strict subordination to, and governed by, the civil power.*"
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> law.lis.virginia.gov

Virginia's provision goes further than the federal text in one critical respect: it names the militia as "composed of the body of the people, trained to arms." That phrase demolishes any argument that the right belongs only to organized state forces. Virginia's own constitution says the people *are* the militia. Virginia also adds the standing army warning — the armed citizen is not the threat to ordered society. The disarmed citizenry, dependent on a state monopoly of force, is what the Founders feared.

George Mason, principal architect of the Virginia Declaration of Rights, argued that disarming the people was the surest path to tyranny. Patrick Henry echoed him: "The great object is that every man be armed." James Madison drew directly from Mason's Virginia Declaration when drafting what became the Second Amendment. The federal protection was, in this sense, Virginia's gift to the nation — a protection now threatened by Virginia's own legislature.

### The Biblical Foundation

**Exodus 22:2** establishes the oldest legal principle on this question: "*If a thief is caught while breaking in and is struck so that he dies, there will be no bloodguiltiness on his account.*" God himself, speaking through Mosaic law, declares that a man who defends his home against violent intrusion bears no guilt. The right of home defense is not a modern invention or a conservative talking point. It is explicit moral reasoning from God, codified three thousand years before the Bill of Rights. When *Heller* called self-defense "the central component" of the Second Amendment, the Court was standing — whether it knew it or not — on divinely ordained principle.

**Nehemiah 4:17–18** shows us the model: "*Those who were rebuilding the wall and those who carried burdens took their load with one hand doing the work and the other holding a weapon. As for the builders, each wore his sword girded at his side as he built.*" Nehemiah did not arm an elite guard — he armed the

people themselves. Armed self-sufficiency was not a failure of trust in God. It was the model God endorsed. The two-handed image — one hand building, one hand ready — is the biblical portrait of a free people who depend on God while taking responsibility for their own security.

**Genesis 1:27** underlies both passages: "*So God created mankind in his own image, in the image of God he created him; male and female he created them.*" (NIV) The Imago Dei declares that every human being carries intrinsic dignity worth defending. If your life has immeasurable worth, you have the God-given capacity and responsibility to defend it. A government that says you may not effectively defend a life God declared priceless has claimed an authority it was never given — regardless of what any statute says.

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## Section III — The Supreme Court Framework

Four decisions. Sixteen years. A doctrine built in stages, each case extending and clarifying the one before it.

**District of Columbia v. Heller, 554 U.S. 570 (2008)** settled the individual-versus-collective debate: "*The Second Amendment protects an individual right to possess a firearm unconnected with service in a militia, and to use that arm for traditionally lawful purposes, such as self-defense within the home.*" D.C.'s handgun ban was struck down. The Court held that the handgun is protected because it is "overwhelmingly chosen by American society" for lawful self-defense, and that the home is the zone where defensive need "is most acute." *Heller* acknowledged that some regulations — on felons, the mentally ill, and sensitive places — remain constitutional. But the outer limits of that allowance would be tested in later cases.

**McDonald v. City of Chicago, 561 U.S. 742 (2010)** incorporated the right against state governments: "*We therefore hold that the Due Process Clause of the Fourteenth Amendment incorporates the Second Amendment right recognized in Heller.*" After *McDonald*, the constitutional floor established in *Heller* binds every state, every city, and every Virginia locality — including any that might attempt to pass its own more restrictive firearms ordinances.

**New York State Rifle & Pistol Association v. Bruen, 597 U.S. 1 (2022)** is the most consequential Second Amendment decision since *Heller*. It abolished the means-ends balancing tests lower courts had been applying and replaced them with a single historical-tradition test. Government must now show any firearms restriction is "consistent with this Nation's historical tradition of firearm regulation." As the Court reaffirmed in *Bruen*, quoting *Heller*: "*Constitutional rights are enshrined with the scope they were understood to have when the people adopted them.*" (*Bruen*, 597 U.S. at 25; quoting *Heller*, 554 U.S. at 634–635.) The Second Amendment was adopted in 1791; the Fourteenth in 1868. Historical evidence that long predates or postdates either time may not illuminate the scope of the right.

Governments can no longer justify restrictions by pointing to crime statistics or modern policy preferences. They must produce historical analogues from 1791 or 1868. For many modern gun control measures, no such analogue exists.

**United States v. Rahimi, 602 U.S. ___ (2024)** tested whether *Bruen*'s test was absolute. The Court upheld a federal statute disarming individuals subject to domestic violence protective orders, but on narrow grounds that reinforce rather than retreat from *Bruen*. The majority confirmed the statute survived only because it was constitutional as applied to Rahimi's specific circumstances — and drew a firm line: "*We reject the Government's contention that Rahimi may be disarmed simply because he is not* '*responsible*.' '*Responsible*' *is a vague term.*" The government cannot use open-ended moral judgments to strip Second Amendment rights. Courts applying *Rahimi* to state legislation still must ask the *Bruen* question first.

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## Section IV — Virginia's Statutory Regime

**Red Flag Law — Va. Code § 19.2-152.13.** Virginia's Emergency Substantial Risk Order authorizes a judge or magistrate to strip a person of their firearms initially on an ex parte basis — without notice, without the person present — upon petition by law enforcement or a Commonwealth's attorney, based on probable cause that the person "poses a substantial risk of personal injury to himself or others in the near future." A circuit court hearing with a "clear and convincing evidence" standard follows under § 19.2-152.14. The constitutional tension is real: a constitutional right is removed before any conviction, before any full adversarial hearing, based on a prediction of future behavior. *Bruen*'s demand for historical analogue is acute here — the record of pre-conviction disarmament based on predicted dangerousness is thin, and courts across the country are actively litigating the question.

**Universal Background Checks — Va. Code § 18.2-308.2:5.** Virginia requires background checks on all firearm transfers, including private sales. No person may sell a firearm for value "unless he has obtained verification from a licensed dealer in firearms that information on the prospective purchaser has been submitted for a criminal history record information check." Background checks carry a stronger historical pedigree than most of Virginia's modern gun regulations — the principle of ensuring purchasers are not prohibited persons has deeper roots than many recent statutory additions — and have generally fared better in post-*Bruen* litigation.

**One Handgun Per Month — Va. Code § 18.2-308.2:2(R).** Virginia limits handgun purchases to one per thirty-day period for non-dealer individuals, with Class 1 misdemeanor penalties and exemptions for law enforcement, licensed dealers, concealed carry permit holders, firearm replacement, trade-in transactions, and antique firearms. No clear Founding-era analogue for quantity restrictions has been established in the post-*Bruen* case law.

**State Preemption — Va. Code § 15.2-915.** Localities may not adopt ordinances governing "the purchase, possession, transfer, ownership, carrying, storage, or transporting of firearms, ammunition, or components" beyond what state law expressly permits. Preemption creates a uniform floor of rights across Virginia — preventing the patchwork that would otherwise make a Virginian a felon in one county and a law-abiding citizen in the next.

**HB 217 — the live question.** Passed by the General Assembly and communicated to Governor Spanberger on March 31, 2026, HB 217 creates two new prohibitions, effective July 1, 2026.

New Va. Code § 18.2-287.4:1 prohibits the import, sale, manufacture, purchase, or transfer of an "assault firearm" — defined by reference to § 18.2-308.2:2(F) as any semi-automatic center-fire rifle or pistol equipped with a magazine holding more than twenty rounds, designed to accommodate a silencer, or equipped with a folding stock. Violation is a Class 1 misdemeanor. A conviction triggers a three-year prohibition on purchasing, possessing, or transporting any firearm — effectively a three-year suspension of Second Amendment rights for a misdemeanor.

New Va. Code § 18.2-309.1 prohibits the import, sale, barter, transfer, or purchase of any "large capacity ammunition feeding device" — a magazine or similar device with capacity exceeding fifteen rounds. Class 1 misdemeanor. Persons who lawfully possessed such devices before July 1, 2026 may keep them and may transfer them only to a licensed dealer or out-of-state recipient.

HB 217's categorical ban on the sale of commonly owned semi-automatic rifles raises serious constitutional questions under *Bruen*'s historical-tradition test. The AR-15 platform and similar semi-automatic rifles are among the most commonly owned firearms in America — and *Heller* specifically protected weapons "in common use" for lawful purposes. No historical analogue from 1791 or 1868 supports a categorical prohibition on the purchase and transfer of an entire class of such firearms.

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## Section V — The Steel-Man: The Strongest Case for HB 217

Intellectual honesty demands that we present the best version of the opposing argument. Here it is.

**On harm reduction:** High-capacity magazines increase mass shooting lethality by reducing the frequency with which a shooter must reload — the moment most commonly identified as the opportunity for intervention or escape. Virginia experienced its own tragedy at Virginia Tech in 2007. The argument is not that banning magazines stops all violence. The argument is that limiting magazine capacity measurably reduces the worst outcomes in the worst scenarios. When children die in classrooms, the moral urgency to act is real.

**On democratic legitimacy:** HB 217 passed through a democratic process in both chambers of the General Assembly. Virginia's elected representatives made a legislative judgment about how to balance public safety against individual rights. Courts in a democratic system should show meaningful deference to such judgments.

**On constitutional limits:** *Heller* itself acknowledged that the Second Amendment is not unlimited, specifically declining to "cast doubt on longstanding prohibitions" and calling certain regulations "presumptively lawful." The *Bruen* test asks for analogical reasoning from historical *principles* — not identical laws — and the principle of regulating "dangerous and unusual weapons" has genuine historical roots. A reasonable argument exists that high-capacity semi-automatic weapons exceed what the Founders contemplated as protected "arms."

Taken on its own terms, this argument deserves serious consideration. The harm reduction evidence is real. The democratic legitimacy concern is genuine. And the constitutional limits argument has found traction in some lower courts even after *Bruen*.

## Section VI — The Refutation: Three Points of Constitutional Failure

**Point 1: Harm reduction cannot override a constitutional right.** The steel-man for HB 217 is ultimately a harm reduction argument — and that is precisely the type of argument *Bruen* forecloses. The Supreme Court was explicit: the government cannot justify a firearms restriction by demonstrating that it serves a compelling interest in public safety. That is the means-ends balancing test the Court abolished. The question is not whether a regulation reduces harm. The question is whether it fits within the Nation's historical tradition.

This is not judicial callousness to suffering. It is the recognition that every constitutional right can be made to seem burdensome when measured against aggregate harm. The First Amendment protects speech that sometimes causes real injury. The Fourth Amendment protects privacy that occasionally allows guilty people to go free. If public safety rationales could override constitutional rights whenever marginal harm reduction could be demonstrated, there would be no constitutional rights left — only privileges licensed by the government's assessment of their social cost. Constitutional rights exist precisely for this moment — when democratic majorities want to restrict a right because of how some people misuse it.

**Point 2: Democratic legitimacy does not confer constitutional validity.** Courts appropriately defer to legislative judgments in areas where the Constitution is silent or permissive. But the Second Amendment is not silent. The entire point of constitutional rights is that they are counter-majoritarian. As the Supreme Court observed in *West Virginia v. Barnette* (1943): "The very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials." HB 217 passed the Virginia General Assembly. That is relevant to its democratic legitimacy. It is irrelevant to its constitutional validity.

**Point 3: The historical tradition test has no answer for HB 217.** The steel-man's strongest constitutional argument is that *Bruen* allows analogical reasoning from the historical principle of regulating "dangerous and unusual weapons." This fails for two reasons.

First, semi-automatic firearms with detachable magazines are not "unusual." They are among the most commonly owned firearms in America — tens of millions in circulation. *Heller* was explicit that the Second Amendment protects weapons "in common use" for lawful purposes. No serious historical argument supports the proposition that the Founders intended to allow the government to prohibit whatever weapon became most popular for ordinary civilian self-defense.

Second, the relevant historical analogue for HB 217 would need to support a *categorical ban* on the purchase and transfer of an entire class of commonly owned firearms. No such broad prohibition existed in 1791 or 1868. The absolute nature of the restriction — you may not buy, sell, or transfer this class of firearm at all — mirrors precisely the kind of categorical prohibition *Heller* struck down.

**The Virginia-specific dimension:** Article I, Section 13 identifies the militia as "composed of the body of the people, trained to arms." If the people are the militia, a law that progressively restricts the arms available to the people — prohibiting the most common military-pattern rifles from civilian ownership —

directly undermines the constitutional architecture Virginia's founders built. The federal floor is already strong. Virginia's ceiling is higher. Richmond is attempting to tunnel beneath both.

**Contact Governor Spanberger Before April 13, 2026**

**Governor Gia Spanberger must act on HB 217 by 11:59 p.m. on April 13, 2026.** Her options are to sign it, veto it, or allow it to lapse into law without her signature. Make your voice heard before the deadline.

✉ **Contact the Governor — governor.virginia.gov**

🏛 **Find My Virginia Delegate**

🏛 **Find My Virginia Senator**

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## Section VII — Practical Implications for Virginians

**Licensed professionals.** Virginia attorneys, physicians, social workers, and other licensed professionals face a specific exposure from the red flag law that most discussion overlooks: the professional consequences of an Emergency Substantial Risk Order. An ESRO is a civil proceeding, but it becomes public record. A professional subject to an ESRO — even one dismissed at the circuit court hearing — may face licensing board scrutiny and background check complications before any court has found the order warranted. The due process gap between emergency issuance and circuit court review is a professional liability every licensed Virginian should understand.

**Firearms dealers and retailers.** If HB 217 is signed or lapses into law, Virginia licensed dealers face compliance obligations effective July 1, 2026. Sales of firearms meeting the "assault firearm" definition — equipped with a magazine holding more than twenty rounds, designed for a silencer, or equipped with a folding stock — become criminal misdemeanors regardless of federal licensing. Magazine sales above fifteen rounds are prohibited statewide. Dealers should consult legal counsel now on inventory disposition, existing transfer orders, and the mechanics of the grandfathering provision. A Class 1 misdemeanor conviction triggering a three-year firearms prohibition makes even an inadvertent violation uniquely costly for any employee personally involved in a non-compliant transaction.

**Students and young adults.** Virginia college students in shared housing face particular exposure under the red flag law — a roommate's complaint or a wellness check can generate an ESRO proceeding with no prior notice and no right to be heard until after disarmament has already occurred. State law preempts local government firearms ordinances under § 15.2-915, so a city or county cannot impose restrictions beyond what state law permits. University policies, which operate through contract and institutional authority rather than local ordinance, raise a separate and more complex set of legal questions. Students should understand both the statutory and policy frameworks. Know your rights. Know your campus policy. Know the difference.

**Pastors and churches.** Virginia law does not prohibit licensed concealed carry permit holders from carrying in houses of worship unless the church itself prohibits it. The church has authority — and responsibility — to establish its own security policy. What is the congregation's theology of self-defense? What does the church's insurance permit? Does the congregation have licensed members willing to serve in a security capacity? These are questions of pastoral wisdom as much as legal compliance. Nehemiah did not arm an elite guard — he armed the people. A church that has thought through its security posture is not abandoning trust in God. It is following the model God endorsed: faithful stewardship that takes real-world threats seriously while trusting the Lord with outcomes.

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## Section VIII — Conclusion: The Constitutional Bottom Line

The constitutional bottom line is this: the right of the people to keep and bear arms is individual, pre-political, and explicitly protected by both the federal Constitution and Virginia's own founding document. The Supreme Court has spent sixteen years building a doctrine that means what it says. The historical tradition test from *Bruen* demands more than good intentions and harm reduction data from governments that wish to restrict this right. It demands a historical pedigree that most modern gun control legislation — including HB 217 — cannot produce.

Virginia wrote the prototype. Virginia's standard is higher. And Virginia's General Assembly has just sent to the governor's desk a bill that sits in direct tension with both the constitutional text Virginia authored and the SCOTUS doctrine that now enforces it.

The biblical framework does not soften this analysis. It deepens it.

Romans 13:1 instructs us: "*Let every person be subject to the governing authorities. For there is no authority except from God, and those that exist have been instituted by God*." Governing authority is real, it is God-ordained, and Christians do not take lightly the obligation to operate within it. But Acts 5:29 completes the tension: "*We must obey God rather than men*." Peter and the apostles spoke these words to the Sanhedrin — the legitimate governing authority of their day — when that authority commanded them to stop teaching in the name of Jesus. The governing authority was real. Its command was legitimate in form. And the apostles refused, because the command exceeded the authority's jurisdiction.

We are not at the Acts 5:29 threshold with HB 217 — not yet. There are constitutional processes for challenging this law, and those processes should be exhausted. The courts are open. The November 2026 elections are coming. But let no one mistake the moral stakes. The Second Amendment protects a right that comes from God — not from any constitution. The Constitution recognizes and protects that right. It did not create it. Exodus 22:2 predates the Bill of Rights by three thousand years. The right to defend a life made in the image of God is not a grant of government. It is a recognition of a divine endowment that exists independently of any statute, any legislature, any governor's signature.

Stand firm. Engage the process. Hold Richmond to the standard Richmond itself adopted.

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## Primary Sources

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*For a concise overview suitable for sharing, see the companion summary article: Second Amendment — Right to Bear Arms in Virginia — Defending the Foundation | Article 3 of 8 | Virginia Christian Alliance*