

VIRGINIA:

IN THE FAIRFAX COUNTY CIRCUIT COURT

KIMBERLY LAFAVE, et al.)	
<i>Plaintiffs,</i>)	
)	
v.)	Case No. CL2021-01569
)	
)	
THE COUNTY OF FAIRFAX, VIRGINIA, et al.)	
<i>Defendants.</i>)	
)	

ORDER

THIS MATTER came before the Court for a hearing on Plaintiffs' Motion for a Preliminary Injunction on March 20, 2023. After hearing evidence and argument from the parties, the Court took the matter under advisement. On May 24, 2023, upon consideration of the previously submitted pleadings, evidence and argument of counsel, and for the reasons stated from the bench (a transcript of which is attached hereto and incorporated into this Order by this reference), it is hereby

ADJUDGED, ORDERED AND DECREED that the Plaintiffs' Motion for Preliminary Injunction is DENIED.

IT IS SO ORDERED.

ENTERED this 23 day of June, 2023.


Fairfax County Circuit Court Judge

SEEN AND OBJECTED TO FOR THE REASONS STATED IN PLAINTIFFS' MEMORANDA AND ON THE RECORD:



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SEEN AND OBJECTED TO THE FINDING OF PLAINTIFFS' IRREPARABLE HARM, THE BALANCE OF THE EQUITIES FAVORS PLAINTIFFS, AND THAT THE PUBLIC INTEREST WOULD BE SERVED BY GRANTING A PRELIMINARY INJUNCTION, AND FOR THE REASONS STATED IN DEFENDANTS' MEMORANDUM AND ON THE RECORD:



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VIRGINIA:

**IN THE CIRCUIT COURT
FOR COUNTY OF FAIRFAX**

KIMBERLY LAFAVE, ET AL,

PLAINTIFF,

VS.

CASE NO. CL2021-1569

COUNTY OF FAIRFAX, ET AL,

DEFENDANT.

**JUDGE'S RULING FROM THE
TRIAL BEFORE
THE HONORABLE CHRISTIE ANN LEARY**

**WEDNESDAY, MAY 24, 2023
9:01 A.M.**

**FAIRFAX COUNTY COURTHOUSE
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APPEARANCES

OTHERS PRESENT :

STEPHEN HALBROOK

WILLIAM TAYLOR

JEANNINE MILLER, PARALEGAL



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**JUDGE'S RULING FROM THE
TRIAL BEFORE
THE HONORABLE CHRISTIE ANN LEARY
WEDNESDAY, MAY 24, 2023
9:01 A.M.**

THE COURT: We are back on the record in the case of LaFave vs. County of Fairfax et al, CL2021-1569. We are here this morning with regards to the Court's ruling from a prior hearing back in March, and I have everybody appearing via Webex. And hopefully everyone can hear me okay, but please let me know if we have any technology issues. So this matter came before the Court from an evidentiary hearing on plaintiffs' request for a preliminary injunction. Trial took place in this matter on March 20, 2023, and at the conclusion of the hearing, the Court took the matter under advisement. Litigation has been ongoing in this case since it began in January of 2021. Most recently, the Honorable Dontae Bugg denied plaintiffs' motion for summary judgment on November 7, 2022. The instant motion for a preliminary injunction was filed on January 27, 2023. This motion requests enforcement of a Fairfax County ordinance be

1 preliminary enjoined until the case is determined
2 on the merits at trial. Trial in this matter is
3 set for September 18, 2023.

4 After review of the evidence
5 submitted, the arguments of counsel, and the
6 applicable law, the Court is now prepared to
7 rule. This matter arises out of an alleged
8 unconstitutionality of a 2020 enacted Fairfax
9 County code provision which limits possession of
10 firearms in certain public areas. On April 22,
11 2020, the Virginia General Assembly amended and
12 reenacted Virginia Code Section 15.2-915, which
13 provides authority to counties, cities, and towns
14 to enact ordinances which restrict the use of
15 firearms in government buildings and in parks and
16 recreational areas.

17 Consistent with that statute in
18 September 2020, Fairfax County enacted Code
19 Section 6-2-1A, which is the ordinance at issue
20 in this case. This ordinance mirrors identically
21 the language of the Virginia statute. The two
22 challenged provisions of the ordinance in this
23 case are section 6-2-1A2, which restricts
24 firearms in county parks, otherwise referred to
25 as the parks restriction, and section 6-2-1A4,

1 which restricts firearms at or adjacent to
2 certain events, or referred to by the parties of
3 the events restriction. Fairfax County also
4 adopted an official enforcement of policy which
5 prohibits enforcement of the ordinance unless
6 officers first conform, confirm warning signage
7 posted at any entrances or exits at qualifying
8 locations, and two, attempt to educate and seek
9 voluntary compliance from violators.

10 On January 29, 2021, plaintiffs
11 filed suit against the County of Fairfax and the
12 county's acting chief of police, collectively
13 referred to as the defendants. The complaint in
14 this case asserts that the Fairfax County
15 ordinance constitutes an ongoing violation of the
16 Virginia individual Constitutional right to bear
17 arms enshrined in the Virginia Constitution at
18 Article 1 Section 13, and the right to due
19 process at Article 1 Section 11.

20 The named plaintiffs in this case,
21 Robert Holzhauser, Kimberly LaFave, and Glenn
22 Talbon are three individual plaintiffs who are
23 registered gun owners and who reside in Loudoun
24 and Fairfax Counties. The individual plaintiffs
25 each gave a deposition explaining how the

1 ordinance applied to them personally, asserting a
2 violation of their right to carry firearms
3 publicly for self-defense. Plaintiff LaFave is a
4 dog walker who carries for self-defense, as she
5 often walks through wooded areas. Plaintiff
6 Holzhauser lives surrounded by county-owned
7 properties and was a regular user of Fairfax
8 County parks for physical training and walking
9 his dog. And plaintiff Talbon would bike through
10 county parks and on county-maintained trails.

11 Plaintiffs argue that the Fairfax
12 County ordinance at issue is unconstitutional,
13 but as applied and facially. The Virginia
14 Supreme Court has stated that a plaintiff can
15 only mount a successful facial challenge to a
16 statute by first showing that the statute in
17 question is unconstitutional as applied to him or
18 her, and that the statute in question would not
19 be constitutional in any context. To this, I'm
20 referring to the Toghill vs. Commonwealth case,
21 289 Va. 220, a 2015 Virginia Supreme Court case.
22 Based upon the examination of those arguments and
23 relevant case law from both parties, the Court
24 will determine whether it's appropriate to issue
25 a preliminary injunction to prevent enforcement

1 by the defendants of the applicable Fairfax
2 County ordinance.

3 In Virginia, a preliminary
4 injunction is an extraordinary remedy that rests
5 on the sound discretion, judicial discretion to
6 be exercised upon consideration of the nature and
7 circumstances of a particular case. And for
8 this, the Court is relying on the case of Loudoun
9 County School Board vs. Cross, a 2021 case at
10 WL9276274, and that case is quoting the case of
11 Commonwealth ex. rel. Bowyer vs. Sweet Briar
12 Institute, a 2015 case at WL6364691. A
13 preliminary injunction is meant to preserve the
14 status quo between the parties during ongoing
15 litigation. The Court may contemplate the
16 substance and adequacy of a plaintiffs' factual
17 allegations and also the veracity and magnitude
18 of the asserted harm. While the Virginia Supreme
19 Court has not set forth a specific framework for
20 evaluating preliminary injunctive relief,
21 Virginia courts typically follow the federal
22 standard, and for this, the Court is relying on
23 the case of Zachary Piper LLC vs. Popelka, 109
24 Va. Circuit 71, a Fairfax County case from 2021.

25 A plaintiff seeking a preliminary

1 injunction must establish first he is likely to
2 succeed on the merits. Second, he is likely to
3 suffer irreparable harm in the absence of
4 preliminary relief. Third, the balance of the
5 equities tips in his favor, and fourth, the
6 injunction is in the public interest. In
7 evaluating these factors, the Court must balance
8 the competing claims of injury and consider the
9 effect on each party of granting or withholding
10 relief. The parties in this case are in
11 agreement as to the standard that is applicable
12 to this Court's analysis of the propriety of a
13 preliminary injunction. The points of
14 disagreement arise from the application of the
15 preliminary injunction framework to the facts of
16 this case, given the current state of
17 constitutional jurisprudence.

18 Of significance to this Court is
19 that the plaintiffs combined their constitutional
20 challenge of the ordinance at issue to the
21 Virginia Constitution alone. This attack creates
22 an issue of first impression in the Commonwealth
23 of Virginia in the wake of New York State Rifle &
24 Pistol Association, Incorporated vs. Bruen, 142
25 Supreme Court 2111, a 2022 case. And in

1 consideration of the sole Virginia precedent
2 analyzing this particular amend, or this
3 particular article of the Virginia Constitution
4 in *Digiacinto vs. Rector and Visitors of George*
5 *Mason University*, 281 Va. 127, a 2011 Virginia
6 Supreme Court.

7 Turning first to the first factor
8 to be analyzed with regards to a preliminary
9 injunction, a preliminary evaluation of the
10 strength of the plaintiffs' claim, whether the
11 ordinance violates the Virginia Constitution,
12 Article 1 Section 13, requires this Court to
13 examine the applicable standard to apply when
14 analyzing a constitutional challenge to the right
15 to bear arms encapsulated by the Virginia
16 Constitution. Defendants note that the
17 applicable constitutional analysis under Virginia
18 law is not yet clear due to the new Second
19 Amendment framework recently set forth in *Bruen*.

20 While it is true that the Virginia
21 Supreme Court has not yet applied the *Bruen*
22 analysis, two Virginia courts have held that the
23 right to bear arms under the Virginia
24 Constitution, Article 1 Section 13, is
25 coextensive with the rights guaranteed under the

1 Second Amendment to the U.S. Constitution. Those
2 cases are the case previously mentioned and then
3 a case out of the city of, the Circuit Court of
4 the City of Winchester, Commonwealth vs.
5 Stickley, which is 2022 WL16950948, a 2022 case.
6 However, with these two cases, one case is
7 distinguishable from this case and the other is
8 not controlling precedent.

9 This Court does not believe that
10 Digiacinto held that the Second Amendment in
11 Article 1 Section 13 of the Virginia Constitution
12 are coextensive in all circumstances. In
13 Digiacinto, which was prior to the Bruen case,
14 the Supreme Court of Virginia held that the
15 campus of George Mason University qualified as a
16 sensitive place, such that GMU's prohibition of
17 weapons on campus was un, or excuse me, was
18 constitutional. The Digiacinto court
19 distinguished the GMU campus as a sensitive
20 place, and in Digiacinto, the Virginia Supreme
21 Court reviewed whether the Virginia Constitution,
22 Article 1 Section 13, contained greater or lesser
23 protections to the right to bear arms than that
24 of the Second Amendment of the United States
25 Constitution.

1 The interpretation of Article 1
2 Section 13 of the Virginia Constitution was an
3 issue of first impression to the Digiacinto
4 court. For purposes of the analysis of the
5 application of both the Federal and Virginia
6 Constitutions in that case, Digiacinto declined
7 to hold that the Virginia Constitution provided a
8 greater protection to the Second Amendment and
9 instead found for purposes of the facts relevant
10 to that case alone that the Second Amendment and
11 the Virginia Constitution were coextensive.
12 In doing so, though, this Court notes that the
13 issue is not settled in this case because
14 Digiacinto limited its holdings to the facts of
15 that case. Of note, Digiacinto considered a
16 challenge to both the Second Amendment of the
17 U.S. Constitution as well as Article 1 Section 13
18 of the Virginia Constitution.

19 Here, the plaintiffs challenged
20 the Fairfax County ordinance on the grounds of
21 the Virginia Constitution alone. No other case
22 in Virginia precedence has examined Article 1
23 Section 13 prior to Digiacinto. The only
24 analysis since that case arises from a circuit
25 court opinion out of the city of Winchester. In

1 the case of Stickley vs. the City of Winchester,
2 the circuit court in Winchester applied the Bruen
3 analysis to grant a preliminary injunction
4 enjoining enforcement of a Winchester city
5 ordinance. In that 2022 case, the ordinance at
6 issue in Stickley is virtually identical to that
7 in this Fairfax case, which prohibits firearms in
8 city parks in Winchester and in any public right
9 of way in or adjacent to a permanent event.

10 The Stickley court issued its
11 ruling granting the preliminary injunction in a
12 comprehensive letter opinion. The Court found
13 that the plain text of the Virginia Constitution
14 covered the conduct at issue, namely, the desire
15 of an individual to carry firearms for self-
16 defense at public events and public parks. The
17 Stickley court then held that the city had not
18 met its burden under Bruen to demonstrate the
19 restrictions were consistent with tradition.

20 Nothing in the dicta in Digiacinto
21 regarding public streets or, or excuse me, noting
22 the dicta in Digiacinto regarding public streets
23 and parks, the Stickley court found that
24 locations encompassed by the city ordinance were
25 not sensitive places within the historical

1 context of firearm regulation. Stickley is one
2 Virginia circuit court's interpretation of the
3 likelihood of success under a claim analogous to
4 the instant case. However, the decision to grant
5 a preliminary injunction rests within the
6 discretion of the Court hearing the evidence in
7 the request. And although Stickley is analogous
8 to this case, it is not dispositive.

9 Turning to the issue of what rule
10 of law should be employed to analyze the first
11 prong required for this request of a preliminary
12 injunction, this Court believes that the Bruen
13 analysis is required. An examination of the
14 legislative history surrounding the enactment of
15 Article 1 Section 13 makes clear that the
16 Virginia General Assembly meant for the plain
17 text of Article 1 Section 13 to incorporate the
18 right to bear arms in the Virginia Constitution,
19 and that said right was to cover individual
20 conduct, and not as the defendant suggests, a
21 mere militia right. Therefore, this Court finds
22 that the Bruen analysis should apply.

23 Under Bruen's two-step analysis,
24 this Court must first ask, number one, whether
25 the individual's proposed course of conduct is

1 covered by the plain text of the constitutional
2 amendment, and if yes, then number two, whether
3 the constitution presumptively protects the
4 conduct in the government, must justify the
5 regulation by demonstrating that it is consistent
6 with historical tradition of firearm regulation.
7 Bruen emphasized that there are sensitive places
8 where arms carrying may be prohibited consistent
9 with the Second Amendment in that case, and
10 citing that courts can use analogies to those
11 historical regulations of sensitive places to
12 determine that modern regulations prohibiting the
13 carry of firearms in new or analogous sensitive
14 places are constitutional permissible.

15 With regard to the first prong of
16 the Bruen analysis, this Court finds that the
17 plaintiffs have established that the first prong
18 has been met. As a result, the burden now shifts
19 to the defendants to establish whether the
20 ordinance in this case is consistent with the
21 nation's, or excuse me, with Virginia's
22 historical tradition of firearms regulation and
23 not throughout the United States. In addressing
24 this historical analysis, the United States
25 Supreme Court in Bruen explained that historical

1 sources are relevant because the Constitution's
2 meaning is fixed according to the understandings
3 of those who ratified it. And that's Bruen at
4 page 2132.

5 But when it comes to interpreting
6 the Constitution, not all history is created
7 equal. The United States Supreme Court itself
8 has declared that constitutional rights are
9 enshrined with the scope they were understood, to
10 have understood by the people who adopted them,
11 and that's Bruen quoting the Heller case at 554
12 U.S. 634 and 5. Much discussion has been
13 undertaken in Bruen as to the operable period in
14 history to apply to the needed historical
15 analysis with the justices debating in Bruen
16 whether courts should use 1791, the date of the
17 adoption of the Second Amendment of the U.S.
18 Constitution, or 1868, the date of the adoption
19 of the Fourteen Amendment to the U.S.
20 Constitution, making the Bill of Rights
21 applicable to the states as the appropriate
22 historical timeline.

23 Whereas here, the plaintiffs
24 challenge not the Second or the Fourteenth
25 Amendments but the Virginia Constitution. The

1 Virginia Constitution at issue here, Article 1
2 Section 13, was adopted in 1971. Plaintiffs
3 assert that pursuant to Digiacinto, the Second
4 Amendment of the U.S. Constitution and Article 1
5 Section 13 of the Virginia Constitution are
6 coextensive, and therefore the application of the
7 Bruen case and the historical analysis required
8 is limited to pre-reconstruction era laws. This
9 Court, however, is not persuaded by this logic.

10 With respect to this case, the
11 operable period of history for purposes of the
12 analysis that is required in this case should be
13 1971, which is when the Virginia Legislature
14 chose to adopt the right to bear arms in Article
15 1 Section 13. To review historical tradition
16 according to 1791, the date on which the Second
17 Amendment was adopted, or 1868, the date on which
18 the Fourteenth Amendment was adopted, apply in
19 the Second Amendment to the states, would ignore
20 the fact that the Virginia General Assembly chose
21 to wait nearly 100 years before incorporating the
22 right to bear arms into the Virginia
23 Constitution. It makes no sense to suggest that
24 the Virginia Legislature would have bound
25 themselves to an understanding of the Virginia

1 Constitution that they did not share when they
2 enacted Article 1 Section 13 in 1971.

3 In its analysis, the Stickley
4 court in Winchester analyzed the procedural
5 history of the enactment of Article 1 Section 13.
6 In doing so, the Court reviewed the extensive
7 debate amongst the then-sitting legislature as to
8 the effect of Virginia's enactment of the right
9 to bear arms, as well as the existing Second and
10 Fourteenth Amendments of the U.S. Constitution,
11 and the impact on Virginia to continue to enact
12 reasonable gun legislation. These debates
13 occurred in the late 1960s, and this timeframe is
14 of significance to this Court given Bruen, in
15 which the Supreme Court has placed heavy emphasis
16 on the need for historical introspection of the
17 existence of gun legislation. This Court's
18 review of the applicable legislative history
19 associative of the enactment of Article 1 Section
20 13 does not leave this Court to conclude that the
21 analysis of the productions of Article 1 Section
22 13, nor the ability to regulate gun control in
23 the Commonwealth of Virginia should be confined
24 identically to the historical timeframe afforded
25 to the Second Amendment or the Fourteenth

1 Amendment of the U.S. Constitution.

2 This case challenges only the
3 constitutional application of the Virginia
4 Constitution. Plaintiffs would have this Court
5 rule that Digiacinto established that even in the
6 absence of a challenge to the Second Amendment,
7 this Court must find that the Virginia and
8 Federal Constitutions are coextensive for this
9 analysis, and therefore that this Court is bound
10 to analyze this case as it would a challenge to
11 the Second Amendment, thus confining any
12 historical analysis undertaken to the period of
13 1791 when the Second Amendment was enacted. Such
14 a conclusion ignores the legislative history of
15 the enactment of Article 1 Section 13 and draws a
16 conclusion not specifically set forth in the
17 prior Digiacinto case. In making this
18 conclusion, this Court finds that for purposes of
19 the facts of this case, Article 1 Section 13 and
20 the Second Amendment are not coextensive when
21 applying the historical analysis required in the
22 wake of Bruen.

23 Regarding the second step in
24 Bruen, defendants have provided a lengthy and
25 detailed compilation of state and local laws

1 prohibiting firearms in parks. In addition to
2 the federal compendium and regulation dating back
3 to the 1600s up through the 1960s at the time of
4 the amendment of the Virginia Constitution, to
5 provide for a right to bear arms. See
6 specifically the appendix B of defendant's motion
7 in opposition to this request for a preliminary
8 injunction. In *Stickley*, the Court in Winchester
9 found that the city had failed to demonstrate
10 that its restrictions were analogous to
11 traditional historical restrictions. However,
12 the support cited by the government in *Stickley*
13 was apparently limited to excerpts from the
14 legislative debate on Article 1 Section 13, and
15 an example that Virginia prohibited firearms in
16 state parks from at least 1965 to 2012.

17 The defendants in this case have
18 provided a much more extensive compilation. With
19 regard to the applicable historical analysis,
20 this Court incorporates by reference appendix B
21 to their opposition to this motion for a
22 preliminary injunction, which provides a
23 historical review of applicable laws which
24 predate 1971 and the enactment of Article 1
25 Section 13. Based upon a thorough examination of

1 the historical sources cited, ample historical
2 basis exists for the prohibition of firearms in
3 public parks and at public events consistent with
4 that sought in the applicable Fairfax ordinance.
5 The defendants have met their burden to
6 demonstrate that the firearms restrictions in the
7 Fairfax ordinance are consistent with historical
8 tradition.

9 In the words of the Bruen court,
10 cases implicating unprecedented societal concerns
11 or dramatic technological changes may require a
12 more nuanced approach. Parks in the modern sense
13 did not come into being until the mid-19th
14 century, as the modern concept of a public park
15 emerged in the 19th and 20th century. There are
16 numerous examples of legislation designed to
17 limit the right to carry weapons in such spaces.
18 In examination of the unique characteristics of
19 county parks as covered through the testimony of
20 various witnesses at the trial of this
21 preliminary injunction reveal that Fairfax
22 County, in Fairfax County the majority of
23 visitors to the parks include families and
24 children attending athletic events, educational
25 programming, and family-oriented events. Such

1 uses make the parks more akin to a sensitive
2 place like a school or recreation center.

3 The Court in this opinion does not
4 need to analyze or reach the issue of whether the
5 county parks fall within the sensitive places
6 doctrine. First, there is no Virginia Supreme
7 Court jurisprudence commanding such a decision on
8 the issue, but second, this Court is not reaching
9 that analysis for purposes of a decision on the
10 request for a preliminary injunction. But
11 certainly, the Digiacinto court left open the
12 argument on that issue when considering
13 restrictions on George Mason University. In
14 light of the historical traditions of firearms
15 regulations in parks and at public events, this
16 Court finds that for purposes of this specific
17 case and the challenge mounted by the plaintiffs
18 under the Virginia Constitution alone, the
19 plaintiffs have not yet met the first prong of
20 the test for a preliminary injunction regarding
21 the Fairfax ordinance and their ability to
22 succeed on the merits regarding a constitutional
23 challenge to that ordinance.

24 Turning to the second prong of
25 irreparable harm, Virginia courts have held that

1 a temporary violation of a constitutional right
2 is enough to establish irreparable harm, and the
3 Court relies on the case of Lynchburg Range &
4 Training vs. Northam, which is 105 Va. Circuit
5 159, a 2020 case. Further, as the U.S. Supreme
6 Court has recently noted in Bruen, the
7 constitutional right to bear arms in public for
8 self-defense is not a second-class right, subject
9 to an entirely different body of rules than other
10 guarantees, and that's Bruen at 2156. The
11 government, on the other hand, the potential harm
12 to the defendants if the injunction is granted is
13 clear, at any time the government is joined by a
14 court from effectuating statutes enacted by
15 representatives of its people, it suffers a form
16 of irreparable injury, and that's citing to the
17 Maryland vs. King case, 567 U.S. 1301 in 2012.

18 Here, the plaintiffs waited to
19 seek a preliminary injunction until January 2023,
20 two years after the suit was originally filed and
21 only eight months before the current trial date.
22 Courts often deny preliminary injunctive relief
23 when a party substantially delays moving for a
24 preliminary junction because such delay reflects
25 a lack of irreparable harm. At first glance, the

1 filing timeline of plaintiffs' motion undermines
2 their claim for irreparable harm, and for this,
3 the Court relies on the Clint's case at 872 F.
4 2nd, page 80.

5 Because a preliminary injunction
6 is promised on an urgent need to protect the
7 rights of the plaintiff, a delay in seeking
8 relief suggests that it's not necessary.
9 However, the plaintiffs' delay in seeking the
10 relief in this case was at least partially due to
11 their strategic decision to first seek summary
12 judgment, which was denied relatively recently in
13 November 2022. The trial date was originally set
14 for November of 2022 before being continued to
15 September of this year. The Court is not
16 persuaded that the delay in raising the
17 preliminary injunction operates a bar as to the
18 conclusion for irreparable harm, and on this
19 point, the plaintiffs would carry the day.

20 With respect to the balance of
21 equities under this factor, the plaintiffs must
22 demonstrate that the harm to them before the
23 trial on the merits without the requested relief
24 would be greater than the harm to the county.
25 For this, the Court relies on the King case at

1 567 U.S. 1303.

2 **(WHEREUPON, the Court conferred with someone in**
3 **the courtroom.)**

4 **THE COURT:** The court reporter? I
5 think we've lost the court reporter. We don't
6 see her on the screen. Does anybody else see her
7 on theirs?

8 **MR. HALBROOK:** Yes.

9 **MR. KAY:** I see her on there.

10 **MR. HALBROOK:** She's here.

11 **CLERK:** She's back.

12 **THE COURT:** Okay, never mind.

13 Sorry.

14 **MR. KAY:** No worries.

15 **THE COURT:** We lost her on our
16 end, I guess. So turning back to the public
17 interest factor, analogous to the discussion,
18 Virginia courts have held that the public
19 interest favors enjoining a constitutional
20 violation not allowing the unconstitutional
21 application of a statute to perpetuate, and for
22 that the Court relies on Elhert vs. Settle, 105
23 Va. Circuit 544, a 2020 case. Here, the public
24 interest factor is disputed as follows. The
25 plaintiffs argue that because there is a

1 constitutional right to publicly carry a firearm
2 for self-defense, it is in the public interest to
3 preserve this right and grant the injunction.
4 Then defendants respond that the ordinance was
5 designed to protect public safety and reduce the
6 gun violence, so an injunction would not be
7 against public interest. On this factor, with
8 respect to the weighing of both the plaintiff and
9 the defendant's claim, the Court finds that the
10 plaintiff would carry the day as to the public
11 interest associated with the potential
12 constitutional right.

13 But after an examination of all
14 the factors with respect to a preliminary
15 injunction, the Court finds that the plaintiff
16 has not met their burden to establish a right to
17 this extraordinary remedy based upon the Court's
18 belief that there is not a likelihood of success
19 as to the first prong of the preliminary
20 injunction review. And as a result, the Court,
21 this Court is denying the request for a
22 preliminary injunction. After filing suit in
23 2021, the plaintiffs delayed for two years before
24 making this request, and in assessing the
25 plaintiffs' likelihood of success on the merits,

1 this is drawn into question when examining this
2 case under the historical framework provided by
3 the U.S. Supreme Court, given that the plaintiffs
4 have chosen to pursue a remedy under the Virginia
5 Constitution alone.

6 So that is the Court's ruling.

7 Are there any questions as to my ruling?

8 **MR. KAY:** I don't have, we don't
9 have any questions on our side. Do you want us
10 to prepare an order, Judge? Or are you going to
11 prepare one?

12 **THE COURT:** I would appreciate if
13 you would prepare one, Mr. Kay, and if you could
14 circulate it to counsel and then you can file it
15 through chambers.

16 **MR. KAY:** Will do.

17 **MR. MAYFIELD:** Nothing from
18 plaintiffs, Your Honor.

19 **THE COURT:** Thank you. And given
20 that I have no questions from anyone, I will go
21 ahead and adjourn for the morning, and I hope
22 you-all enjoy the rest of your week.

23 **MR. MAYFIELD:** Thank you, Your
24 Honor.

25 **MR. KAY:** Have a nice week.

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THE COURT: Thank you.

MR. HALBROOK: Thank you.

Goodbye.

THE COURT: Same to you.

**(WHEREUPON, the JUDGE'S RULING was concluded at
9:27 a.m.)**

CAPTION

The foregoing matter was taken on the date, and at the time and place set out on the title page hereof.

It was requested that the matter be taken by the reporter and that the same be reduced to typewritten form.

1 **CERTIFICATE OF REPORTER AND SECURE ENCRYPTED**
2 **SIGNATURE AND DELIVERY OF CERTIFIED TRANSCRIPT**

3 I, **Cheryl Renee Lane**, Notary Public, do hereby
4 certify that the foregoing matter was reported by
5 stenographic and/or mechanical means, that same was
6 reduced to written form, that the transcript prepared
7 by me under my direction, is a true and accurate
8 record of same to the best of my knowledge and ability;
9 that there is no relation nor employment by any attorney
10 or counsel employed by the parties hereto, nor financial
11 or otherwise interest in the action filed or its outcome.

12 This transcript and certificate have been digitally
13 signed and securely delivered through our encryption
14 server.

15 IN WITNESS HEREOF, I have here unto set my
16 hand this 25TH day of MAY, 2023.



Cheryl Renee Lane

Court Reporter / Notary

Notary Registration Number: 7864242

My Commission Expires: 05/31/2024

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