

Virginia:

In the Circuit Court of the City of Richmond, John Marshall Courts Building

GUN OWNERS OF AMERICA, INC.)
VIRGINIA CITIZENS DEFENSE LEAGUE)
KENNETH VAN WYK)
ERICH PRATT)
JOHN VELLECO,)
)
Plaintiffs,)
)
v.)
)
HON. RALPH S. NORTHAM)
COLONEL ANTHONY S. PIKE)
)
Defendant.)
_____)

Case No.: CL 20-279

ORDER

On January 15, 2020, the parties appeared before the Court on Plaintiff's Complaint and Application for Temporary Injunction enjoining the enforcement of a portion of Executive Order Forty-Nine. The Executive Order cites the Constitution of Virginia and Va. Code §§ 2.2-103 and 44-146.13 *et seq.* as the Governor's authority for issuing such an Order. Va. Code § 2.2-103 provides the Governor "authority and responsibility for the formulation and administration of the policies of the executive branch..." The Department of General Services, as a member of the executive branch, is vested with the control of the Capitol Square and other property at the seat of government pursuant to Va. Code § 2.2-1144. The Department is instructed to exercise that authority "under the direction and control of the Governor." Va. Code § 2.2-1144. Furthermore, the Governor is vested with the power to take "action from time to time as is necessary for the adequate promotion and coordination of state and local emergency services activities relating to the safety and welfare of the Commonwealth." Va. Code § 44-146.17. Where the Governor declares a state of emergency, "courts must give deference to the professional judgment" of those tasked with making "complex, subtle, and professional decisions." *Winter v. Natural Resource Defense Council, Inc.*, 555 U.S. 7, 24 (2008) (citing *Goldman v. Weinberger*, 475 U.S. 503, 507 (1986) for the proposition that "courts must give deference to the professional judgment of military

authorities concerning the relative importance of a particular military interest” when evaluating a motion for a preliminary injunction). While the grant of authority in Va. Code § 44-146.17 is limited by Va. Code § 44.146.15(3), the Court **FINDS** that the Governor is granted sufficient deference within and has sufficient authority outside of the Commonwealth of Virginia Emergency Services and Disaster Law of 2000 by which he could enact Executive Order Forty-Nine.

Additionally, in consideration of the Application for Injunction filed by the Plaintiffs, “a court may not grant injunctive relief unless a party has shown that party would suffer irreparable harm without the injunction, and that the party has no adequate remedy at law.” *May v. R. A. Yancey Lumber Corp.*, 822 S.E.2d 358, 367 (2019). “Granting or denying a temporary injunction is a discretionary act arising from a court’s equitable powers.” *Id.* “No temporary injunction shall be awarded unless the court shall be satisfied of the plaintiff’s equity.” *Id.* (citing Va. Code § 8.01-628).

In evaluating whether the Plaintiffs would suffer an irreparable harm in this case, the Court is guided by the principles articulated in *Heller v. District of Columbia*, namely, that the Second Amendment right to bear arms is not unlimited. 554 U.S. 570, 595 (2008). Accordingly, the Court noted in *Heller* that “nothing in [their] opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings.” *Id.* at 626. The Circuit Court for the District of Columbia relied on this principle when it ruled that “the Capitol Grounds ban [on weapons] does not ‘impinge[] upon a right protected by the Second Amendment.’” *U.S. v. Class*, 930 F.3d 460, 463 (2019). In that case, the Appellant was found not on Capitol Grounds, but in an adjacent Maryland Avenue parking lot. *Id.* at 462. However, the Court held that although the Maryland Avenue parking lot “is not a government building, we conclude that it is sufficiently integrated with the Capitol for *Heller*’s sensitive places exception to apply.” *Id.* at 464. Additionally, the Tenth Circuit in *Bonidy v. United States Postal Service*, 790 F.3d 1121, upheld a ban prohibiting weapons on United States Postal Service property where a person left his firearm in his vehicle in the Post Office parking lot when he entered the Post Office building, because “the Second Amendment right to bear arms has not been extended to ‘government buildings.’” *Id.* at 1123.

The Capitol Square in Richmond, Virginia contains office buildings for many state employees. These buildings are sensitive locations, as they are “sufficiently integrated with the

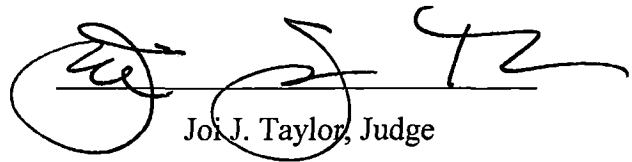
Capitol.” *U.S. v. Class*, 930 F.3d at 464. Additionally, the foregoing case law demonstrates that because individuals have limited right to bear arms, the Plaintiffs in this case will not suffer an irreparable harm sufficient to justify the injunction sought by the Plaintiffs. Accordingly, and upon consideration of the evidence, argument of the parties, and the relevant law, the Court hereby **DENIES** the Application for Temporary Injunction.

Pursuant to Rule 1:13 of the Supreme Court of Virginia, the Court dispenses with the parties’ endorsement of this Order.

The Clerk is directed to forward a certified copy of this Order to the parties.

It is so **ORDERED**.

ENTER: 1 / 16 / 2020



Jo J. Taylor, Judge