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March 27, 2020

Hon. Ralph S. Northam  
Governor of Virginia  
The Capitol  
Richmond, Virginia 23218

Re: Removing Indoor Shooting Ranges from Executive Order 53

Dear Governor Northam:

Our firm represents the Virginia Citizens Defense League (“VCDL”), a nonprofit organization exempt from taxation under section 501(c)(4) of the Internal Revenue Code. VCDL’s members include many thousands of gun owners and supporters of gun rights throughout the Commonwealth, including many who operate and use indoor shooting ranges.

Your Executive Order 53, issued March 23, 2020, imposes temporary restrictions on certain businesses due to concerns about the spread of COVID-19. This letter explains why one of those restrictions — closing “indoor shooting ranges” — violates the U.S. Constitution, the Virginia Constitution, and limitations on your powers specified in the Virginia emergency powers statute.

Paragraph 4 of your Order mandates the “[c]losure of all public access to recreational and entertainment businesses” from March 24, 2020 to April 23, 2020. Although it is easy to understand why theaters, museums, and other businesses may be reasonably described as “recreational and entertainment,” the Order also orders closed all “indoor shooting ranges.” Indeed, the subsection of your Order closing these ranges categorizes them along with what it calls “places of indoor public amusement.” However, ranges are very different than places of public amusement. There is no enumerated right in the United States or Virginia constitution to a tanning salon, racetrack, or bowling alley, but there is such a right that protects shooting ranges.

The Order to close ranges infringes on the People’s pre-existing right, as recognized by our nation’s founders in the Second Amendment to the U.S. Constitution: “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.**” Virginia recognizes that right in Article I, Section 13 of our Virginia Constitution: “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....**” Although it is certainly true that there are those who visit ranges to shoot as a sport, it is also true that ranges are where Virginians are instructed to, and practice, their skills to use firearms as part of their inherent right to self-defense. The suspension of constitutionally enumerated rights constitutes an “infringement,” both of the right to “keep and bear arms” and the right to be “trained to arms.”

In *Ezell v. City of Chicago*, 651 F.3d 684 (7th Cir. 2011) (“*Ezell I*”), the U.S. Court of Appeals for the Seventh Circuit ruled that shooting ranges are protected by the Second Amendment and could not be shut down by an Ordinance of the City of Chicago. “The right to possess firearms for protection implies a corresponding right to acquire and maintain proficiency in their use; the core right wouldn’t mean much without the training and practice that makes it effective.” *Id.* at 704. And, as the Seventh Circuit explained: “The right to possess firearms for protection implies a corresponding right to acquire and maintain proficiency in their use.” *Id.*

After *Ezell I*, Chicago attempted to impose stringent requirements for gun ranges, and that ordinance too was challenged and struck down by the Seventh Circuit. *See Ezell v. City of Chicago*, 846 F.3d 888, 892 (7th Cir. 2017) (“*Ezell II*”). The Court held that “[r]ange training ... lies close to the core of the individual right of armed defense.” *Id.* at 893.

While Seventh Circuit decisions are not binding on Virginia, they certainly constitute highly persuasive authority on the precise issue raised here, recognizing the constitutional right to access and operate gun ranges.

Additionally, any exercise by the Governor of Virginia invoking the Virginia Emergency Services and Disaster Law, *Va. Code* § 44-146.13, *et seq.* is limited by a rule of construction which protects the right of the people to keep and bear arms. It states:

**Nothing** in this chapter is to be construed to ....

(3) **Empower the Governor**, any political subdivision, or any other governmental authority to **in any way limit or prohibit the rights of the people to keep and bear** arms as guaranteed by Article I, Section 13 of the Constitution of Virginia or the Second Amendment of the Constitution of the United States, including the otherwise lawful possession, carrying, transportation, sale, or transfer of firearms except to the extent necessary to ensure public safety in any place or facility designated or used by the Governor, any political subdivision of the Commonwealth, or any other governmental entity as an emergency shelter or for the purpose of sheltering persons... [*Va. Code* § 44-146.15 (emphasis added).]

In recent weeks, Americans have come to understand more than ever that they simply cannot rely on government to protect them and their families from all manner of threats, and thus, they must assume responsibility for their own protection. Notably, those who have been indifferent or even hostile to firearm rights have rushed to gun stores to buy the guns they never considered buying before, as COVID-19 disrupts normal governmental functions. Sheriffs and police could have their ranks reduced by those testing positive for the virus, and those on duty could be busy with other duties of their office. These new gun owners want to learn quickly about basic gun operation and safety and need access to ranges. In many localities, and especially during periods of bad weather, the closest, best, and at times the only place to practice with their new firearms is an “indoor shooting range.” Shutting down those ranges impairs the ability of Virginians new to guns to enhance their familiarity with their new possession. Long-time gun owners also need the right to access ranges to practice and hone their skills.

Indeed, those hostile to gun rights often warn about untrained gun owners presenting a health and safety threat to the public and, based on that popular argument, then closing ranges actually would endanger public health and safety. In any event, even experienced gun owners need access to ranges to practice their skills of self-defense, which may be called upon in the event of increased social unrest. In areas where criminals are being released early from jail, the need is intensified.

Both federal and state constitutions recognize the militia as the body of citizens trained to arms. Closing ranges impairs the proper operation of what Virginia law terms the “unorganized militia.”

The threat of passing COVID-19 at “indoor gun ranges” is probably much less than might be imagined by those who have never been inside such a range. Physical barriers are established between shooters, so that they are not in close proximity. Moreover, ventilation systems are installed which are designed to take smoke and particulates along the firing line, and blow it away from shooters, and through a sophisticated filtration system. As the byproducts of firing a round are already addressed at indoor ranges, these systems would have the secondary effect of protecting against the spread of infection.

Lastly, while we do not have a complete list of indoor ranges in Virginia, we know they operate throughout most of the state. One list appears [here](https://rangelistings.com/shooting-ranges/VA.html).<sup>1</sup> Many outdoor ranges limit their use to members and, even for ranges now accepting new members, the application process can take time. On the other hand, indoor ranges are generally open to the public. There are not an enormous number of such ranges, and the public health implications of allowing them to remain open is insignificant compared to the important function they serve.

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<sup>1</sup> <https://rangelistings.com/shooting-ranges/VA.html>

For the foregoing reasons, VCDL respectfully requests you to modify EO 53 to remove the restriction on “indoor shooting ranges” without delay. Should you decline to correct EO 53, please advise us so that we may advise our client.

Sincerely yours,

A handwritten signature in black ink, appearing to read "William J. Olson". The signature is fluid and cursive, with a long horizontal stroke at the end.

William J. Olson

WJO:gw

cc: Philip Van Cleave, President  
Virginia Citizens Defense League