IN THE
Supreme Court of Virginia

RECORD NO. 200958

COLONEL GARY T. SETTLE, in his official capacity as SUPERINTENDENT of the VIRGINIA STATE POLICE,

Petitioner,

v.

PETER EHLERT, et al.,

Respondents.

RESPONSE TO PETITION FOR REVIEW

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I. Young Adults Are Protected by Article I, Section 13.

A. Resolution of this Case Does Not Depend on Who Qualifies as an "Adult," but Instead on Who Is Part of "the People."

In its first assignment of error, the Commonwealth claims that the circuit court "improperly elided the historical evidence establishing that those under 21 had no right to keep and bear arms at the time of the Founding." Defendant's Petition for Review ("Pet.") at 7. Yet the Commonwealth's argument, and the cases on which it relies, neither answer nor even address this question, but rather focus on an entirely different issue — at what age a person was an "infant" or a "minor" during various eras in Virginia law. *See* Pet. at 9-11 (arguing that, at "common law ... the age of majority was 21" and anyone under 21 was a "minor" or "infant"; citing early Virginia cases discussing the concept of an "infant"; and discussing the 1972 decrease of the age of "adulthood").

None of that is relevant here. The Commonwealth's historical analysis of "adulthood," while perhaps academically enlightening, is untethered to the text of Article I, Section 13 which does not protect "the right of *adults* to keep and bear arms" but "the right of *the people*." The question, then, is not what constitutes "the age of majority," but rather who makes up "the people" protected by Article I, Section 13. The text provides the answer, requiring that "the people" includes — *at a minimum* — those who form "a well regulated militia." Once the correct question is asked, the answer becomes indisputable — persons 18 to 20 have *always* been part of the "militia," both in Virginia and in federal law. As Plaintiffs explained below, the

age of enlistment during the Revolutionary War was as young as 15. Compl. ¶ 60. After the war, the federal 1792 Militia Act set the age range at 18 to 45. *Id.* Likewise, Virginia law has always included those aged 18-20 as part of the militia. *See* "An Act to Amend and Reduce into One Act the Several Acts of Assembly for Regulating the Militia of this Commonwealth" (Dec. 24, 1795), Sec. 13 ("every able bodied white male citizen between the ages of eighteen and forty-five");[1] "The Militia Law of Virginia" (Mar. 2, 1858) (18-45);[2] 1870 Constitution of Virginia, Article IX (18-45).[3] *See also* "An Act to Amend the Act, for Regulating the Militia of this Commonwealth" (Dec. 2, 1793), Section 8 (establishing fines for "*infants*" who shirked their militia duties).[4] Virginia is not alone, as *every single one* of the first 14 states in the United States defined the militia to begin at either 16 or 18 years of age. *See* Exhibit A.

The United States Supreme Court also has made it abundantly clear that adults 18-20 are part of "the people." In *District of Columbia v. Heller*, 554 U.S. 570 (2008), the Supreme Court noted that the right to keep and bear arms "is exercised individually and belongs to all Americans." *Id.* at 581. As the Court explained, "the 'militia' in colonial America consisted of a subset of 'the people' – those who were

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[1] S. Shepherd, The Statutes at Large of Virginia, from October Session 1792, to December Session 1906, Inclusive (1835), p. 345, https://catalog.hathitrust.org/Record/009732153.

[2] The Militia Law of Virginia, Published pursuant to Act of March 2, 1858, § 1, https://catalog.hathitrust.org/Record/010448070.

[3] http://confinder.richmond.edu/admin/docs/va1872.pdf.

[4] Shepherd at 204.

male, able bodied, and within a certain age range." *Id.* at 580. Thus, while the term "the people" used in Article I, Section 13 applies broadly to "all members of the political community," *at a minimum* it certainly includes as a subset those who constituted the "militia."[5] *See also Heller* at 612 (noting "'[t]he right of the *whole people*, old *and young*, men, women and *boys*, and not militia only….'") (quoting with approval *Nunn v. Georgia*, 1 Ga. 243, 251 (1846)) (emphasis added). *See also United States v. Miller*, 307 U.S. 174, 179 (1939) ("the Militia comprised all males physically capable of acting in concert for the common defense."). *See also* Thomas M. Cooley, The General Principles of Constitutional Law in the United States of America (1880), p. 271 ("The meaning of the provision undoubtedly is, that *the people, from whom the militia must be taken, shall have the right to keep and bear arms*….") (emphasis added).

This Court, too, has confirmed that young adults 18-20 years old have Article I, Section 13 rights. In *United States v. Blakeney*, 44 Va. 405 (1847), this Court noted that "the ability ... to carry arms ... exist[s] in as full force at the age of eighteen as at the age of twenty-one." *Id.* at 410. This Court continued, stating that "[w]e know, as a matter of fact, that at the age of eighteen, a man is capable intellectually and physically of bearing arms...." *Id.* at 418. This unbroken historical trend continues to this day, as the Code of Virginia still defines the militia age range from 16 to 55.

[5] Likewise, Article I, Section 13 includes *at a minimum* the right to keep and bear arms to be ready to serve in a militia (*Miller* at 179-80), and protected "arms" *at a minimum* includes weapons useful in military (or militia service) (*Miller* at 178).

Virginia Code Section 44-1. [6]

Thus, from its earliest days until the present day, Virginia law unwaveringly has provided that the "militia" includes adults between the ages of 18 and 20. Although Plaintiffs' pleadings in the circuit court extensively briefed this issue, the Commonwealth's petition ignores the text, and never uses the words "militia" or "the people." Rather, the Commonwealth seeks to misdirect, hoping to persuade this Court that this case boils down to who once was an "adult" under Virginia law, rather than who is part of "the people"[7] under the Virginia Constitution.

B. The Decisions the Commonwealth Cites Do Not Help its Case.

The Commonwealth relies on opinions from other courts for the proposition that adults under 21 have no Article I, Section 13 rights. Pet. at 8-10. None helps the Commonwealth's case. First, *Horsley v. Trame*, 808 F.3d 1126 (7th Cir. 2015) is entirely inapplicable here, because the Seventh Circuit did not even address the issue, expressly stating that "[w]e need not decide today whether 18-, 19-, and 20-year-olds are within the scope of the Second Amendment...." *Id.* at 1131.[8] Second, it appears

[6] *See also* Va. Code §18.2-308.7, which clearly presupposes that those 18-20 years old be permitted to purchase and possess handguns. In Virginia, adults 18-20 years old may also bear handguns openly without seeking government permission.

[7] Members of the militia were not merely *permitted* to keep and bear arms, but instead they were legally *required* to do so. The 1792 Militia Act provided that each person "provide himself with a good musket or firelock." 1 Stat. 271. Also, "when called for service these men were expected to appear bearing arms supplied by themselves." *Miller* at 179.

[8] The Commonwealth also relies on *State v. Callicutt*, 69 Tenn. 714 (1878),

that the opinions cited made the same error as the Commonwealth does here — assuming that the scope of the right to keep and bear arms turns on the infant/adult distinction. *See NRA v. ATF*, 700 F.3d 185, 201-02 (5th Cir. 2012); *Powell v. Tompkins*, 926 F. Supp. 2d 367, 387 (D. Mass. 2013); *In re Jordan*, 33 N.E.3d 162, 168 (Il. 2015); *Hirschfeld v. BATFE*, 417 F. Supp. 3d 747, 752 (W.D. Va. 2019). Third, the Massachusetts statute in *Powell* and the Illinois statute in *Jordan* both prohibited firearm possession only by those *under 18*, not those under 21.

Fourth, several of the Commonwealth's cases justified disarming those 18-20 by reliance on "xenophobic and bigoted ... practices" such as colonial era laws disarming "Loyalists" and racist laws disarming "slaves" and "free blacks," concluding that it is permissible to "target[] groups of otherwise law-abiding people who [are] thought to be danger[ous]...." *Powell* at 386-87. *See also Hirschfeld* at 756; *NRA v. ATF* at 200, 201, 206; Pet. at 8-9 (comparing adults 18-20 years old to felons and the mentally ill, and claiming there to be a classical republican notion that only those with adequate civic virtue could claim the right to arms. Surely, we can do better than that. If anti-gun laws rooted in past racial and political bigotry are now used to justify present restrictions on those 18-20 years old, then they also could be used to justify all manner of mischief.

C. Even if the Commonwealth's Analysis of Adulthood Were Relevant, It Is Flawed.

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but that case was based on a misunderstanding of the Second Amendment as expressed in *Aymette v. State*, 21 Tenn. (2 Hum.) 154 (1840), a case which was expressly repudiated by the Supreme Court in *Heller* (at 613).

The Commonwealth claims that, historically, "those under 21 did not have *full* legal rights," and *thus* they have no right to purchase handguns. Pet. at 11 (emphasis added). That is a *non sequitur*. The Commonwealth cherry picks from Blackstone for the idea that '*full* age ... is 21 years ... till that time [one] is an infant....' Pet. at 11 (emphasis added). The Commonwealth's selective quotation seems to imply that, at common law, all of one's rights accrued at the "full age of 21." But this was not the case, and Blackstone immediately thereafter explained that the various rights and responsibilities which accrue at various ages "are different for different purposes," starting at the age of seven and fully vesting by the age of 21. 1 W. Blackstone, Commentaries on the Laws of England (U. Chi. Facs. ed. 1765) at 450-451. Blackstone then explained that these ages are not fixed by any enduring principle, but rather are "merely arbitrary," and for the most part boil down to the constitutions and laws of various countries (noting that Naples used 18 as the "full age"). *Id.* at 452. Simply put, just because "full legal rights" historically did not vest till age 21, that does not mean that the right to keep and bear arms was (or should be) denied until that age.

D. The Circuit Court's Statutory References Were Not Error, Or Were at Worst Harmless Error.

In its second assignment of error, the Commonwealth faults the circuit court for its reference to Va. Code §§ 1-203 and 1-204. Pet. at 6, 12. The Commonwealth claims the circuit court's decision is "grounded entirely on a *modern, statutory* definition," noting that "it was not until … 1972 – that the General Assembly

abrogated the common law rule by lowering the age of legal adulthood to 18." Pet. at 11, 13. First, the circuit court did not rely "entirely" on the Virginia Code's definition of an adult. Rather, the court relied on *Heller* for its conclusion that adults 18-20 are within the scope of the right to keep and bear arms, noting that "no possession of firearms by felons and the mentally ill implies a right to possession for everyone else not in those categories." Opinion Letter at 9. To the extent the circuit court relied upon the current statutory age of adulthood, such reliance was at worst harmless error, as it relates only to the Commonwealth's argument that those 18-20 years old historically were not adults under Virginia law. But as explained *supra*, the adult/minor distinction has no applicability here.

II. The Commonwealth's Attacks on the Circuit Court's Analytical Framework Are Without Merit.

The Commonwealth's third assignment of error incorporates a mishmash of loosely related allegations scattered throughout its petition, generally challenging the circuit court's mode of analysis. First, the Commonwealth erroneously claims that the circuit court held that "any restriction not 'presumptively lawful' is *per se* invalid…." Pet. at 6. Nothing could be further from the truth. The circuit court observed that the 18-20 year old handgun ban was not part of the list of "presumptively lawful" restrictions in *Heller* (Opinion Letter at 9), but that certainly did not end the court's analysis, nor lead to a *per se* finding. Rather, the circuit court's decision did not hinge on whether the challenged statute appears on the *Heller* list, but instead on whether the statute has "historical justifications," and whether it infringes upon people and

conduct protected by Article I, Section 13. Opinion Letter at 6, 9. This is precisely the type of analysis adopted by *Heller*.

Second, the Commonwealth falsely claims that the circuit court "skipped over" the question of whether those 18-20 years old are within the scope of protection offered by Article I, Section 13, and "proceeded directly to analyzing whether the right was infringed." Pet. at 12. This is simply incorrect. The circuit court *first* concluded that Plaintiff Lowman falls within the scope of the right ("implies a right to possession for everyone else" including adults 18-20 years old like Plaintiff Lowman), and *then* concluded that these rights had been infringed by the statute (effectively banning handgun purchases by those 18-20 years old … "infring[es] on the right to keep and bear arms"). Opinion Letter at 9.

Third, the Commonwealth argues that the circuit court erred by rejecting judge-empowering interest balancing. Pet. at 4, 7, 14. The Commonwealth claims that the circuit court "rejected the framework universally applied in the federal courts of appeals" (Pet. at 4), that "the court erred" by conducting a categorical inquiry "rather than subjecting the law to appropriate scrutiny" (Pet. at 7), and "the circuit court's approach is foreign to any mode of constitutional analysis" (Pet. at 14). Despite its assertion that the circuit court erred in this regard, the Commonwealth failed to identify the path it believes to be correct, such as explaining whether strict or intermediate or some other type of scrutiny *would be* required, or what analysis the court *should have* performed (such as balancing allegedly "substantial" government

interests against allegedly "reasonable" infringements). In other words, the Commonwealth rejects the circuit court's thoughtful rejection of interest balancing for the reasons set out in *Heller* (Pet. at 4, 7, 14) but, at the same time, the Commonwealth never actually argues *in favor of* interest balancing. *Cf.* Defendant's Memorandum in Opposition at 18. Failing to propose the framework to correct the circuit court's alleged error, the Commonwealth has waived the argument, *sub silentio* agreeing (and arguing, *see* Plaintiff's Reply at 15-16) that this case should be resolved on a categorical basis.[9]

In spite of the litany of errors it assigns to the circuit court (Pet. at 6), there are several critical aspects of the circuit court's opinion with which the Commonwealth's Petition does not take issue. First, the Commonwealth has not disputed that the Article I, Section 13 "right to keep and bear arms … implies the corresponding right to buy and sell arms." Opinion Letter at 4. The Commonwealth also does not dispute "that *Heller* and *McDonald* should provide the framework for analyzing the present case." *Id.* And the Commonwealth does not dispute that no Virginia court, including this Court, has gone "beyond the *Heller/McDonald* framework by choosing a level of scrutiny." *Id*.

III. The Circuit Court Properly Considered the Non-Merits Factors.

Last among the cornucopia of errors assigned to the circuit court, the

[9] Indeed, flatly prohibiting adults 18 to 21 from purchasing handguns, the Commonwealth puts itself on all fours with D.C.'s regulation in *Heller*, categorically banning the keeping of handguns in the home for self-defense.

Commonwealth claims the court failed to properly consider the "non-merits factors [for] injunctive relief." Pet. at 15. This assignment, like those above, falls flat.

First, the Commonwealth claims that the circuit court did not "independently analyze" these factors. *Id.* Of course, that is demonstrably false, as the final page of the circuit court's opinion contains a section independently analyzing each of the non-merits factors. Opinion Letter at 11. First, the court concluded that "Lowman has demonstrated irreparable harm"; second, that "the violation easily tips the balance of equities in Lowman's favor"; and third, that "the public interest favors enjoining a constitutional violation...." It is hard to see how the circuit court's analysis of each factor could have been more separate and distinct.

Second, the Commonwealth claims that the circuit court did not conduct any "meaningful analysis" of the balance of equities, and "also gave short shrift to the public interest." Pet. at 15. The Commonwealth claimed that "cursory analysis cannot suffice to enjoin enforcement of a duly enacted law." *Id.* But while it notes the supposed brevity of the circuit court's analysis, the Commonwealth *does not allege* that the circuit court actually made any legal error in this regard.

The Commonwealth cites a decision of this Court for the proposition that it is "reversible error *not to 'consider*[] the factors necessary for ... temporary injunctive relief,'" yet the Commonwealth effectively admits that the circuit court *did consider* those factors — noting twice that the court "concluded" that Plaintiffs prevailed under each factor. Pet. at 15 (emphasis added) (citing *GeoMet Operating Co. v. CNX Gas*

Co. LLC, 661 S.E.2d 139, 140 (Va. 2007)). Entirely unlike this case, *GeoMet* involved a situation where a circuit court's order "contain[ed] injunctive relief that was not requested" by the parties, and "the record d[id] not reflect that the trial court considered the factors necessary for the issuance of temporary injunctive relief." *Id.* There is a world of difference between failing to analyze certain factors *at all*, versus analyzing them in a succinct manner that the Commonwealth finds "cursory." Indeed, the abuse of discretion standard by which the circuit court's decision is judged is met only when a court "fail[s] to take into account a significant relevant factor…." *Landrum v. Chippenham & Johnston-Willis Hosps., Inc.*, 282 Va. 346, 353 (2011). There is no indication in the record that the circuit court erred in this manner.

Finally, it would be impossible for the circuit court *not* to have considered the temporary injunction factors, as both sides fully briefed each of the factors (Complaint ¶¶ 113-121; Brief in Opposition at 30-32; Reply at 28-30), the circuit court engaged in significant discussion of the factors with Plaintiffs' counsel at oral argument (Tr. p. 20 l.3 - p. 23 ll.22), and Plaintiffs' counsel fully argued each of the factors to the circuit court (Tr. p. 19 l.19 - p. 26 l.2). Ironically, at oral argument, the Commonwealth did not even once address the non-merits factors, but now claims on appeal that the circuit court should have considered them further.

Conclusion

The General Assembly has *de facto* imposed a categorical ban on ownership of *handguns* by adults 18-20 years old. In response, the Commonwealth has doubled

down, and actually argues that such persons *have no rights at all* under Article I, Section 13, claiming that "age-related restrictions on the purchase and possession of *firearms* do not even implicate the constitutionally protected right to keep and bear arms." Pet. at 8 (emphasis added).

This Court should not accept the Commonwealth's invitation to approve of the disarmament of law-abiding adults between the ages of 18 and 20. Such persons may seem "young" to some, but they were instrumental in this nation's fight for independence, have served in every one of its wars since then, and indisputably have always been part of "a well regulated militia, composed of the body of the people, trained to arms," which ensures "the proper, natural, and safe defense of a free state." Rather, this Court should follow the example of the Supreme Court of Kansas in *Parman v. Lemmon*, 244 P. 232, 233 (1926), which concluded that "it is reasonable to conclude that the legislature did not intend to make law violators of sixty per cent of the militia of the state, it being estimated that sixty per cent of the personnel of that body are minors…."

For the reasons above, the Petition should be denied.

Respectfully Submitted,

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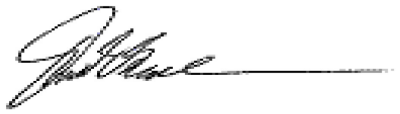
BY: 

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CERTIFICATE

The undersigned hereby certifies that the foregoing Response to Petition for Review complies with Rule 5:17A(g), and that on August 6, 2020, a true and accurate copy was served upon the following counsel for Petitioner via U.S. Mail and e-mail, thereby giving notice of the same:

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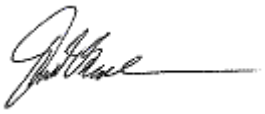

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EXHIBIT A

Early State Militia Laws

State	Relevant Statutory Text	Source
Connecticut	Be it Enacted…That all male Persons, from sixteen Years of Age to Forty-five, shall constitute the Military Force of this State…And be it further Enacted, That all such as belong to the Infantry Companies, and Householders under fifty-five Years of Age, shall, at all Times be furnished at their own Expence, with a well fixed Musket, the Barrel not less than three Feet and an Half long, and a Bayonet fitted thereto, with a Sheath and Belt or Strap for the same, with a Ram-rod, Worm, Priming-wire and Brush, one Cartouch-box carrying fifteen rounds of Cartridges, made with good Musket Powder and Ball, fitting his Gun, six good Flints, and each Militia Man one Canteen holding not less than three Pints, upon Penalty of forfeiting and paying a Fine of Three Shillings for want of such Arms and Ammunition as is hereby required, and One Shilling for each Defect, and the like Sum or Sums for every four Weeks he shall remain unprovided….And be it further enacted, That every Light-Dragoon shall always be provided with…a Case of good Pistols…one Pound of good Powder, three Pounds of sizable Bullets, twelve Flints, a good pair of Boots and Spurs, on Penalty of Three Pounds for want of such Horse, and the Value of each other Article in which he shall be deficient.	An Act for Forming, Regulating, and Conducting the Military Force of this State (Conn. 1786) *in* ACTS AND LAWS OF THE STATE OF CONNECTICUT IN AMERICA 144, 150 (1786).
Delaware	§7 And be it enacted, That every person between the ages of eighteen and fifty, or who may hereafter attain to the age of eighteen years, except as before excepted, whose public taxes may amount to twenty shillings a year, shall at his own expence, provide himself; and every apprentice, or other person of the age of eighteen and under twenty-one years, who hath an estate of the value of eighty pounds, or whose parent shall pay six pounds annually towards the public taxes, shall by his parent or guardian respectively be provided with a musket or firelock, with a bayonet, a cartouch box to contain twenty three cartridges, a priming wire, a brush and six flints, all in good order, on or before the first day of April next, under the penalty of forty shillings, and shall keep the same by him at all times, ready and fit for service, under the penalty of two shillings and six pence for each neglect or default thereof on every muster day,	An Act for Establishing a Militia, §§7-8, 1785 Del. Laws 59.

	to be paid by such person if of full age or by the parent or guardian of such as are under twenty-one years, the same arms and accoutrements to be charged by the guardian to his ward, and allowed at settling the accounts of his guardianship. …. §8 And be it enacted, That every male white person within this state, between the ages of eighteen and fifty, or who shall hereafter attain to the age of eighteen years ,except as before excepted, shall attend at the times and places appointed in pursuance of this act for the appearance of the company or regiment to which he belongs, and if any non-commissioned officer or private, so as aforesaid required to be armed and accoutered with his firelock and accoutrements aforesaid in good order, or if any male white person between the ages aforesaid although not required to be so armed and accoutered, shall neglect or refuse to appear on the parade and answer to his name when the roll is called over….shall forfeit and pay the sum of four shillings for every such neglect or refusal.	
Georgia	[A]ny male free inhabitant, between the age of sixteen and fifty years, who shall refuse or neglect to attend such company muster, shall be liable to a fine of two dollars….And any private who shall attend such company muster without a gun, in good order, or shall misbehave or disobey while under arms, shall be liable to a fine of six dollars, and shall have powder and lead equal to six common cartridges, or be liable to a fine not exceeding one dollar.	An Act for Regulating the Militia of the State, and for Repealing the Several Laws Heretofore Made for that Purpose, 1786 Ga. Laws.
Maryland	§II Be it enacted, by the General Assembly of Maryland, That a lieutenant in each county of this state, of undoubted courage, zeal and attachment to the liberties and independence of America….within ten days after the receipt of their several and respective commissions, shall, by warrant under their hand and seal, appoint fit and proper persons in every county, to make a true and exact list of the names of all able bodied white male persons, between sixteen and fifty years of age. ….	An Act to Regulate the Militia, ch. XVII., §§ II, VI, 1777 Md. Laws 361-62.

	§VI And be it enacted, That the whole of the militia, so enrolled as aforesaid, shall be subject to be exercised in companies…on each of which days every militia man, so enrolled, shall duly attend, with his arms and accoutrements in good order…	
Massachusetts	Whereas the laws now in force for regulating the militia of the Commonwealth, are found to be insufficient for the said purpose: I. Be it therefore enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, That the several laws heretofore made for regulating the militia aforesaid, be and herby are repealed. Provided nevertheless, That all actions and processes commenced and depending in any Court within this Commonwealth, upon or by force of the said laws, shall, and may be sustained and prosecuted to final judgment and execution; and that all officers elected, appointed and commissionated agreeably to law, shall be continued in commission, and hold their respective commands in the militia, in the same manner as they would in case the said laws were still in force. II. And be it further enacted by the authority of the aforesaid, That the said militia shall be formed into a train-band, and alarm-lift; the train-band to contain all able-bodied men, from sixteen to forty years of age, and the alarm-list all other men under fifty years of age, excepting in both cases such as shall be hereafter by this act exempted. …. XIII. And be it further enacted by the authority aforesaid, That every non-commissioned officer and private folder of the said militia, not under the control of parents, masters or guardians, and being of sufficient ability therefore in the judgment of the selectmen of the town in which he shall dwell, shall equip himself, and be constantly provided with a good fire-arm, with a steel or iron ramrod, a spring to retain the same, a worm, priming wire and brush, a bayonet fitted to his fire-arm, and a scabbard and belt for the fame, a cartridge-box that will hold fifteen cartridges at least, six flints, one pound of powder, forty leaden balls suitable for this	An Act for Regulating and Governing the Militia of the Commonwealth of Massachusetts, and for Repealing All Laws Heretofore Made for That Purpose (Mass. 1785) *in* THE PERPETUAL LAWS OF THE COMMONWEALTH OF MASSACHUSETTS, 338, 340-41, 346-47 (1789).

	firearm, a haversack, blanket, and canteen; and if any non-commissioned officer or private soldier shall neglect to keep himself so armed and equipped, he shall forfeit and pay a fine not exceeding three pounds, is proportion to the value of the article or articles in which he shall be deficient, at the direction of the Justice of the Peace before whom trial shall be at hand. XIV. And be it further enacted by the authority aforesaid, That all parents, masters and guardians, shall furnish those of the said militia who shall be under their care and command, with the arms and equipments afore-mentioned, under the like penalties for any neglect. XV. And be it further enacted by the authority aforesaid, That whenever the selectmen of any town shall judge any inhabitant thereof, belonging to the said militia, unable to arm and equip himself in manner as aforesaid, they shall, at the expense of the town, provide for and furnish such inhabitant [sic] with the aforesaid arms and equipments, which shall remain the property of the town at the expence of which they shall be provided; and if any soldier shall embezzle or destroy the arms and equipments, or any part thereof, with which he shall be to furnished, he shall upon conviction before some Justice of the Peace in the county where such offender shall live, be adjudged to replace the article or articles which shall be by him so embezzeled or destroyed, and to pay the cost arising from the process against him; and in café he (hall not within fourteen days after such adjudication against him perform the same, it shall be in the power of the selectmen of the town to which he shall belong, to bind him out to service or labour, for such term of time as shall in the discretion of the said Justice, be sufficient to procure a sum of money equal to the amount of the value of the article or articles embezzeled or destroyed, and to pay the cost arising as aforesaid… …. XXXV. And be it further enacted by the authority aforesaid, That the non-commissioned officers and private soldiers belonging to the said corps of artillery, shall be armed and equipped in the same manner as the train-band of the said militia are in this act directed to arm and equip themselves.	

	…. XXXVIII. And be it further enacted by the authority aforesaid, That every officer, non-commissioned officer and private, belonging to the said cavalry, shall keep himself provided with a good horse, not less than fourteen hands and a half high, a saddle, bridle, holsters, pistols, sword, boots and spurs, carbine with a spring and sling, a cartouch-box, with twelve rounds of cartridge and ball for his carbine, and fix for each pistol, nine flints, a cloak and canteen. …. XL. And be it further enacted by the authority aforesaid, That the officers, non-commissioned officers and privates belonging to the said corps of artillery and cavalry, shall be subject to the same rules and regulations as are by this act provided for the train-band in the militia aforesaid; and the several companies belonging to the said corps shall be subject to the immediate orders of the major-neral commanding the division within which the same shall be raised.	
New Hampshire	Whereas it is the duty and interest of every State, to have the militia thereof properly armed, trained, and in complete readiness to defend against every violence or invasion whatever: And Whereas the laws now in force respecting the regulation of the militia are insufficient for those purposes: Be it therefore enacted…That the training band, so called, shall consist of all the able bodied male persons within the State, from sixteen years old to forty… …. And be it further enacted by the authority aforesaid, That every non-commissioned officer and soldier, both in the alarm list and training band, shall be provided and have constantly in readiness, a good musquet and bayonet fitted thereto, with a good scabbard and belt, a worm, priming-wire and brush, a cartridge-box that will hold, at least twenty-four rounds, six flints, and a pound of powder, forty leaden balls fitted to his gun, a knap-sack, a blanket, and a canteen that will hold one quart.	An Act for Forming and Regulating the Militia within this State, and for Repealing All the Laws Heretofore Made for that Purpose (N.H. 1786) *in* THE LAWS OF THE STATE OF NEW HAMPSHIRE 356-57, 359-60 (1792).

	Such of the training band as are under the care of parents, masters, or guardians, are to be furnished by them with such arms and accoutrements; and such of the training band, or alarm list, as shall be unable to furnish themselves, shall make application to the selectmen of the town, who are to certify to his captain, or commanding officer, that he is unable to equip himself; and the said selectmen shall, at the expense of the town, provide for, and furnish such person with arms and equipments; which arms and equipments shall be the property of the town at whose expense they are provided…	
New Jersey	And Be It Enacted, That the Captain or Commanding Officer of each Company shall keep a true and perfect List or Roll of all effective Men between the Ages of sixteen and fifty Years, residing within the District of such Company….And Be It Enacted, That every Person enrolled as aforesaid shall constantly keep himself furnished with a good Musket, well fitted with a Bayonet, a Worm, a Cartridge-Box, twenty-three Rounds of Cartridges sized to his Musket, a Priming-Wire, Brush, six Flints, a Knapsack and Canteen, under the Forfeiture of Seven Shillings and Sixpence for Want of a Musket, and One Shilling for Want of any other of the aforesaid Articles, whenever called out to Training or Service….Provided always, That if any Person be furnished as aforesaid with a good Rifle-Gun, the Apparatus necessary for the same, and a Tomahawk, it shall be accepted in Lieu of the Musket and the Bayonet and other Articles belonging thereto.	An Act for the Regulating, Training, and Arraying of the Militia and for Providing More Effectually for the Defence and Security of the State, ch. XIII, §§10-11 1781 N.J. Acts 39, 42-43.
New York	Be it enacted by the people of the State of New-York, represented in Senate and assembly, and it is hereby enacted by the authority of the same, That every able-bodied male person, being a citizen of this state, or of any of the United States, and residing in this state…and who are of the age of sixteen, and under the age of forty-five years, shall, by the captain or commanding officer of the beat in which such citizens shall reside, within four months after the passing of this act, be enrolled in the company of such beat. That every captain or commanding officer of a company, shall also enroll every citizen as aforesaid, who shall, from time to time, arrive at the age of sixteen years, or come to reside within his beat, and without delay notify such enrolment	An Act to Regulate the Militia (N.Y. 1786) *in* Thomas Greenleaf, ed., 1 LAWS OF THE STATE OF NEW YORK 227-28 (1792).

	to such citizen so enrolled, by some non-commissioned officer of the company, who shall be a competent witness to prove such notice.…That every citizen so enrolled and notified, shall within three months thereafter, provide himself, at his own expence, with a good musket or firelock, a sufficient bayonet and belt, a pouch, with a box therein to contain not less than twenty-four cartridges suited to the bore of his musket or firelock, each cartridge containing a proper quantity of powder and ball, two spare flints, a blanket and knapsack; and shall appear so armed, accoutered and provided when called out to exercise or duty, as herein after directed.	
North Carolina	§2 Be it therefore enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, that the Militia of this State be divided into six Brigades, viz.: One in each of the Districts of Edenton, New Bern, Wilmington, Halifax, Salisbury and Hillsborough. And each Brigade to be commanded by a Brigadier General. And the Militia of every County shall consist of all the effective men from sixteen to fifty years of age inclusive. …. §4. And be it further enacted, that each Militia soldier shall be furnished with a good Gun, shot bag and powder horn, a Cutlass or Tomahawk, and every Soldier neglecting to appear at any muster, accoutered as above, shall forfeit for every such offence two shillings and six pence (unless he can make it appear that they were not to be procured) to be recovered as other fines. And where any person shall appear to the Field Officers not possessed of sufficient property to afford such arms and accouterments, the same shall be procured at the expence of the County, and given to such persons on muster Days, or when ordered into service, which Guns and Accouterments after such service, shall be returned to the Captain of the Company, and by him carefully preserved for future occasions.	An Act to Establish a Militia in this State, ch. 1, §§2, 4, 1777 Laws of N.C. 1-2.
Pennsylvania	§ I. Whereas a militia law upon just and equitable principles hath ever been regarded as the best security of liberty and the most effectual means of drawing forth and exerting the natural strength of a state…	An Act to Regulate the Militia of the Commonwealth of Pennsylvania, ch.

	…. §III. Be it enacted…, and it is hereby enacted by the Representatives of the Freemen of the Commonwealth of Pennsylvania in the General Assembly met, and by the authority of the same, That the president or in his absence [the] vice-president of the supreme executive council of this commonwealth shall commissionate one reputable freeholder in the city of Philadelphia and one in each county within this state to serve as lieutenant of the militia for the said city and counties respectively. …. § IV. And be it further enacted….That the said lieutenant or sub-lieutenants as aforesaid shall issue his or their warrant to the constable of each township, borough, ward, or district in the said city and counties respectively or to some other suitable person, commanding him in the name of this commonwealth to deliver to him or them…a true and exact list of the names and surnames of each and every male white person usually inhabiting or residing within his township, borough, ward, or district between the ages of eighteen and fifty-three years capable of bearing arms. …. § X. And be it further enacted…That the whole of the militia so enrolled as aforesaid shall be subject to be exercised in companies under their respective officers…and on each of which days every militia-man so enrolled shall duly attend with his arms and accoutrements in good order.	DCCL, §§I, III-IV, X, 1776-77 Penn. Stat. 75-78, 80.
Rhode Island	[A]ll effective Males between the Ages of Sixteen and Fifty . . . shall constitute and make the military Force of this State….And be it further Enacted by the Authority aforesaid, That each and every effective Man as aforesaid shall provide, and at all times be furnished, at his own Expense (excepting such persons as the Town-Councils of the Towns in which they respectively dwell or reside shall adjudge unable to purchase the same) with one good Musquet, and a Bayonet fitted thereto….Be it further enacted that every Person who	An Act for the Better Forming, Regulating and Conducting the Military Force of this State, 1780 R.I. Acts 29, 31-32, 35.

	shall at any Time be found deficient in any of the Arms, Accoutrements and Equipage, as by this act prescribed and directed, excepting those before excepted, such Delinquent shall forfeit and pay a Fine for every such delinquency….All Male Persons between the Ages of Fifty and Sixty, if able in the Judgment of the respective Town-Councils, shall be at all Times armed, accoutered and equipped, in Manner aforesaid upon the same Penalty as though they were held to military Duty.	
South Carolina	[I]t shall be lawful for the Governor, or Commander in Chief of this State, to order the Militia of this State to assemble once in every six months in the City of Charleston, and once in every twelve months in the other districts throughout the state…That every person who, on being summoned, shall willfully neglect to turn out at a regimental muster, properly armed and accoutered…shall be fined in a sum not exceeding four dollars….And be it enacted by the authority aforesaid, that the following persons shall be excused from militia duty…all persons under the age of eighteen years, or above the age of fifty years.	An Act for the Regulation of the Militia in this State, 1784 S.C. Acts 68-69.
Vermont	And that every able-bodied male person, being a citizen of this state, or of any of the united states and residing in this state…who are of the age of sixteen and under the age of fortyfive [sic] years, shall by the captain or commanding officer of the beat in which such citizen shall reside, within four months after passing of this act, be enrolled in the company of such beat….And every citizen, so enrolled and notified, shall within nine months there after, provide himself, at his own expence with a good musket or firelock, with a priming wire and brush, a sufficient bayonet and belt, with a cartouch box, with three pounds of lead bullets suitable to the bore of his musket or firelock, a good horn containing one pound of powder, and four spare flints; and shall appear so armed, accoutred and provided, when called out to exercise or duty, if thereto required.	An Act Regulating the Militia of the State of Vermont. for Regulating the Militia of this State (Vt. 1787) *in* STATUTES OF THE STATE OF VERMONT REVISED AND ANNOTATED, 107 (1791).
Virginia	Be it enacted, That all free male persons between the ages of eighteen and fifty years…shall be enrolled or formed into [militia] companies….Every Officer and soldier shall appear…armed, equipped, and accoutered as follows: The County Lieutenants, Lieutenant Colonels Commandant and Majors with a sword: the	An Act for Amending the Several Laws for Regulating and Disciplining the

	Captains, Lieutenants, and Ensigns, with a sword and espontoon; every non-commissioned officer and private, with a good clean musket carrying an ounce ball, and three feet eight inches long in the barrel, with a good bayonet and iron ramrod well fitted thereto, a cartridge box properly made, to contain and secure twenty cartridges fitted to his musket, a good knapsack and canteen; and moreover, each non-commissioned officer and private shall have at every muster, one pound of good powder and four pounds of lead; including twenty blind cartridges.	Militia, and Guarding against Invasions and Insurrections, ch. LXVII, 1784 Va. Acts 16.