

**VIRGINIA:**

**IN THE CIRCUIT COURT FOR THE CITY OF ROANOKE**

VIRGINIA CITIZENS DEFENSE LEAGUE, et al., )

Plaintiffs, )

v. )

Case No. CL 24-0074

THE CITY OF ROANOKE, et al., )

Defendants. )

**BRIEF FOR AMICUS CURIAE GIFFORDS LAW CENTER TO PREVENT GUN  
VIOLENCE IN SUPPORT OF DEFENDANTS' OPPOSITION TO PLAINTIFFS'  
MOTION FOR A TEMPORARY INJUNCTION**

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## INTERESTS OF *AMICUS CURIAE*<sup>1</sup>

*Amicus curiae* Giffords Law Center to Prevent Gun Violence (“Giffords Law Center”) is a nonprofit policy organization serving lawmakers, advocates, legal professionals, gun-violence survivors, and others who seek to reduce gun violence and improve the safety of their communities.<sup>2</sup> The organization was founded more than 30 years ago following a gun massacre at a San Francisco law firm. In 2017, it was renamed Giffords Law Center after joining forces with the gun-safety organization led by former Congresswoman Gabrielle Giffords. Today, through partnerships with gun-violence researchers, public-health experts, and community organizations, Giffords Law Center researches, drafts, and defends the laws, policies, and programs proven to effectively reduce gun violence. Giffords Law Center also advocates for the interests of gun owners and law enforcement officials who understand that gun-safety legislation and community violence prevention strategies are not only consistent with the Second Amendment—they are essential to protecting public health and safety.

Giffords Law Center has contributed technical expertise and informed analysis as an *amicus* in numerous cases involving firearm regulations and constitutional principles affecting gun policy. *See, e.g., N.Y. State Rifle & Pistol Ass’n, Inc. v. Bruen*, 597 U.S. 1 (2022); *McDonald v. City of Chi.*, 561 U.S. 742 (2010); *District of Columbia v. Heller*, 554 U.S. 570 (2008). Several courts have cited research and information from Giffords Law Center’s *amicus* briefs in Second Amendment rulings. *See, e.g., Ass’n of N.J. Rifle & Pistol Clubs, Inc. v. Att’y Gen. N.J.*, 910 F.3d

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<sup>1</sup> Plaintiffs objected to a request for consent to file this *amicus* and have stated their intention to file an opposition, while Defendants have provided their consent. No party, counsel for a party, or any person other than *amicus* and its counsel made a monetary contribution intended to fund the preparation or submission of this brief.

<sup>2</sup> Giffords Law Center’s website, [www.giffords.org/lawcenter](http://www.giffords.org/lawcenter), is the premier clearinghouse for comprehensive information about federal, state, and local firearms laws and Second Amendment litigation nationwide.

106, 121–22 (3d Cir. 2018); *Stimmel v. Sessions*, 879 F.3d 198, 204, 208, 210 (6th Cir. 2018); *Peruta v. Cty. of San Diego*, 824 F.3d 919, 943 (9th Cir. 2016) (en banc) (Graber, J., concurring).<sup>3</sup>

## INTRODUCTION AND SUMMARY

This case implicates important issues surrounding the intersection of constitutional rights: the Second Amendment right to keep and bear arms for self-defense and the First Amendment right to express and associate freely without fear of intimidation or violence. While the U.S. Supreme Court has held that responsible law-abiding citizens have a right to carry firearms for the purpose of self-defense, it has also made clear that, like other constitutional rights, “the right secured by the Second Amendment is not unlimited.” *District of Columbia v. Heller*, 554 U.S. 570, 626 (2008).

The Second Amendment must be read in harmony with the other guarantees of the Bill of Rights and the longstanding powers of federal, state, and local governments to regulate. In both *Heller* and *New York State Rifle & Pistol Ass’n v. Bruen*, 597 U.S. 1 (2022), the U.S. Supreme Court expressly upheld the government’s longstanding power to regulate guns in connection with certain “sensitive places.” Under the sensitive places doctrine, carrying and possessing firearms may be prohibited in certain locations without infringing Second Amendment rights. *Bruen*, 597 U.S. at 30.

Here, the Plaintiffs’ motion seeks a temporary injunction against enforcement of Roanoke City Code § 24-2.1(a)(b) (the “Ordinance”), which prohibits firearms in Roanoke’s parks on the ground that it violates Article I, § 13 of the Virginia Constitution. In determining whether Roanoke’s parks qualify as a “sensitive place” under *Bruen*, this Court should consider their

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<sup>3</sup> Giffords Law Center filed the briefs in *Stimmel* and *Peruta* under its former name, the Law Center to Prevent Gun Violence.

practical day-to-day usage. This Court must also carefully analyze the risk that an unbridled reading of Second Amendment rights poses to the free expression of First Amendment rights, and to the safety and protection of minors and young adults. First Amendment rights, which Virginia courts have described as “occupy[ing] the same preferred position under the Constitution,” can justify firearms restrictions in appropriate venues. *E.g., Robert v. City of Norfolk*, 188 Va. 413, 423 (1948); *see also Neb. Press Ass’n v. Stuart*, 427 U.S. 539, 561 (1976).

Roanoke’s 51 parks encompass much of the 13,000 acres of public land managed by the City of Roanoke. These parks are frequently used to host public events where individuals exercise their First Amendment free speech rights through protests, rallies, and festivals, and where children and young adults access open areas for a wide range of activities, including youth sports and general recreation. Guns in such sensitive places, where people regularly gather to exercise their First Amendment rights, increases the risk of gun violence and chills the exercise of protected constitutional rights of others.

Given these considerations, as well as Virginia’s longstanding history and tradition of placing restrictions upon public property and regulating firearms in public spaces, the Court should deny Plaintiffs’ motion for a temporary injunction.

## **ARGUMENT**

### **I. The Presence of Firearms in Parks Threaten to Have a Chilling Effect on the Exercise of First Amendment Rights**

The Supreme Court held in *Heller*, and reaffirmed in *Bruen*, that prohibiting weapons in sensitive places is consistent with the Second Amendment. *Bruen*, 597 U.S. at 30. Virginia courts have done the same. *See The First Amendment Weaponized: When Guns Become Public Discourse*, 30 WM. & MARY BILL OF RTS. J. 925, 927 (2022) (citing *Gun Owners of Am., Inc. v. Northam*, No. CL20-279, at 2 (Va. Cir. Ct. Jan. 16, 2020) (citing *Heller*)). Further, *Bruen*

maintains that courts can use analogies “to determine that modern regulations prohibiting the carry of firearms in *new* and analogous sensitive places are constitutionally permissible.” 597 U.S. at 30.

The Supreme Court did not comprehensively define “sensitive places” in *Bruen*. On the one hand, the Court warned against construing “sensitive place” so broadly as to include all places of public congregation where law enforcement is available, rejecting the notion that the entirety of Manhattan could be deemed a “sensitive place.” *Id.* at 30–31. On the other hand, the Court found that it would not be appropriate to construe the term so narrowly as to preclude the government from reasonably regulating areas of public congregation *other than* schools, legislative assemblies, government buildings, polling places, and courthouses. *Id.* This is particularly salient in public places where the presence of firearms would undermine other constitutional protections.

From ancient times, public parks have been traditional places of assembly and congregation. *Hague v. Comm. for Indus. Org.*, 307 U.S. 496, 515 (1939). Roanoke’s Department of Parks and Recreation maintains and manages more than 13,000 acres of public land, with 51 park sites that include city parks, playgrounds, parks with recreation centers, parks with pools, outdoor play courts, baseball diamonds, and dog parks.<sup>4</sup> It is commonplace for residents to use Roanoke’s parks as places of First Amendment expression. This takes the form of a variety of activities, including political protests, rallies, marches, religious and secular celebrations, vigils, and concerts. Recent examples include:

<b>Date</b>	<b>Event</b>	<b>Description</b>	<b>Location</b>
1/21/2017	Protest	Women’s March	Elmwood Park

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<sup>4</sup> See Roanoke Parks & Recreation, *About Us*, <https://www.playroanoke.com/about-us/>; Roanoke Parks & Recreation, *Parks & Facilities*, <https://www.playroanoke.com/parks-facilities/>.



Date	Event	Description	Location
11/8/2018	Protest	Protest against Donald Trump's decision to fire Attorney General Jeff Sessions	Elmwood Park
5/31/2020	Protest	Black Lives Matter protest	Washington Park
7/12/2020	Protest	Protest for racial equality	Elmwood Park
10/9/2021	Event	Roots and Reggae Fest: annual festival to celebrate cultural diversity	Wasena Park
9/16/2023	Event	African-American heritage festival	Elmwood Park
9/30/2023	Event	Annual Walk to End Alzheimer's	Wasena Park
10/8/2023	Event	Faith and Blue: event to engage law enforcement and residents through faith	Elmwood Park
12/24/2023	Vigil	Stand with Palestine Vigil	Elmwood Park
4/28/2024	Event	Pride in the Park festival	Elmwood Park <sup>5</sup>

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<sup>5</sup> Rob Manch, *Thousands Gather in Elmwood Park for Women's March*, WSLs (Jan. 21, 2017), <https://www.wsls.com/news/2017/01/22/thousands-gather-in-elmwood-park-for-womens-march/>; Valencia Jones, *Roanoke Protestors Rally at "Nobody is Above the Law" Event*, WSET (Nov. 10, 2018), <https://wset.com/news/local/roanoke-protesters-rally-at-nobody-is-above-the-law-event/>; Ashley Curtis, *Roanoke Sunday Protest Ends Peacefully Outside City Police Building*, WSLs (May 31, 2020), <https://www.wsls.com/news/local/2020/05/31/small-group-of-protesters-gather-again-in-roanoke-on-sunday/>; Taj Simmons, *'We need everybody on board': Skateboarders, Roller Skaters Protest for Racial Equality*, WSLs (July 12, 2020), <https://www.wsls.com/news/local/2020/07/12/we-need-everybody-on-board-skateboarders-roller-skaters-protest-for-racial-equality/>; *Roanoke Roots and Reggae Festival Embraces Cultural Diversity*, WFXR FOX (Oct. 7, 2021), <https://www.wfxrtv.com/living-local/roanoke-roots-and-reggae-festival-embraces-cultural-diversity/>; Joe Dashiell, *Henry Street Heritage Festival Returns to Elmwood Park on Saturday* (Sept. 15, 2023), <https://www.wdbj7.com/2023/09/15/henry-street-heritage-festival-returns-elmwood-park-saturday/>; *Walk to End Alzheimer's Roanoke*, RoanokeVa.gov, [https://www.roanokeva.gov/Calendar.aspx?EID=7177&month=9&year=2023&day=6&caIType=0](https://www.roanokeva.gov/Calendar.aspx?EID=7177&month=9&year=2023&day=6&caIType=0;); *Faith and Blue*, RoanokeVa.gov, [https://www.roanokeva.gov/Calendar.aspx?EID=7409&month=10&year=2023&day=6&caIType=0](https://www.roanokeva.gov/Calendar.aspx?EID=7409&month=10&year=2023&day=6&caIType=0;); [swva.coalitionforpalestine \(@swva.coalitionforpalestine\) Instagram, https://www.instagram.com/p/C1BGtnKIcnD/](https://www.instagram.com/p/C1BGtnKIcnD/) (last visited May 22, 2024); Lindsey Cook, *Roanoke Hosts Annual Pride in the Park Festival* (Apr. 28, 2024), <https://www.wdbj7.com/2024/04/28/roanoke-hosts-annual-pride-park-festival/>.

Restrictions of firearms in sensitive places are permitted, in part, because such venues often serve to facilitate civic engagement, a core American value enshrined in the federal and Virginia constitutions. See *United States v. Cruikshank*, 92 U.S. 542, 552 (1875) (“a government, republican in form, implies a right on the part of its citizens to meet peaceably for consultation in respect to public affairs”); *Elliott v. Commonwealth*, 267 Va. 464, 473–74 (2004) (“Article I, § 12 of the Constitution of Virginia is coextensive with the free speech provisions of the federal First Amendment.”). The government has the power to regulate the presence of guns in sensitive places to maintain “a public sphere for democratic dialogue, democratic governance, and the reproduction of *democratic community* in which people can relate freely without intimidation or coercion.” Joseph Blocher & Reva B. Siegel, *Guided by History: Protecting the Public Sphere from Weapons Threats Under Bruen*, 98 N.Y.U. L. REV. 1795, 1799 (2023).

Plaintiffs assert that “anyone attending [armed] gatherings will be forced into a Hobson’s choice . . . wherein they either must forgo their freedom of association or must give up their right to bear arms,” Compl. ¶ 29. To the contrary, “[l]ike most rights, the right secured by the Second Amendment is not unlimited.” *Heller*, 554 U.S. at 626. A Second Amendment unmoored from the historical limitations acknowledged in *Bruen* risks overriding First Amendment protections. If more individuals or groups are allowed to carry guns in sensitive places where people typically gather to exercise their rights of assembly and free speech, then peaceable assembly, organizing, marches, rallies, and free expression of ideas and beliefs will become more dangerous. See Gregory P. Magarian, *Conflicting Reports: When Gun Rights Threaten Free Speech*, 83 LAW & CONTEMP. PROBS. 169, 169 (2020) (“In the real world . . . guns far more commonly impede and chill free speech than protect or promote it.”). Those who have historically been silenced—including racial minorities—may experience an especially intense chilling effect. See *Armed*

Assembly: Guns, Demonstrations, and Political Violence in America, *Everytown Rsch. & Pol’y* (Aug. 23, 2021).

Courts cannot reasonably conclude that the Second Amendment creates a right to bear arms that would effectively serve as a heckler’s veto or prior restraint to silence or impede the coequal rights of free speech, free exercise of religion, peaceable public assembly, and freedom of the press to report on public events. *See* Michael C. Dorf, *When Two Rights Make a Wrong: Armed Assembly Under the First and Second Amendments*, 116 *NW. U. L. REV.* 111, 115–37 (2021) (finding the First, Second, and Fourteenth Amendments did not create a right to armed assembly). The Ordinance here is amply supported by longstanding history and tradition, and properly addresses foundational First Amendment concerns about chilling speech.

## **II. Permitting Guns in Parks Where Children and Young Adults Take Part in Youth Recreation Increase the Risk of Deadly Gun Violence**

The presence of children and young adults, especially in the context of youth recreation and sports, further supports the Ordinance’s designation of Roanoke’s public parks as sensitive places. Roanoke’s public parks are frequented by children and young adults—populations that are especially vulnerable in the absence of adequate gun safety regulations.

As other courts have recognized, legislatures have long limited the carrying of firearms in locations where children and young adults congregate. *See, e.g., Mintz v. Chiumento*, No. 1:23-CV-795 (MAD/CFH), 2024 WL 1361047, at \*17 (N.D.N.Y. Mar. 20, 2024) (“[T]his Nation’s tradition of firearm regulation in locations where vulnerable populations are present, . . . includes ‘the tradition of prohibiting firearms in places frequented by children.’”) (quoting *Antonyuk v. Chiumento*, 89 F.4th 271, 339, 363 (2d Cir. 2023)); *see also Siegel v. Platkin*, 653 F. Supp. 3d 136, 154 (D.N.J. 2023) (finding that “youth sports events fall within the sphere of schools” and as a

result, “under *Bruen*, the Court ‘can assume it settled’ that youth sports events are a ‘sensitive place.’”).

In the youth sports context, where emotions can be strong, access to firearms creates a potentially dangerous atmosphere. In 2023, the National Association of Sports Officials conducted a survey of 36,000 sports officials about their game experience. They found that 67.36% of respondents previously had to remove a spectator for poor behavior, 55.32% had to break up a fight, and 11.87% had been physically assaulted during or after a game.<sup>6</sup> Approximately 50% of sports officials surveyed felt unsafe or feared for their safety during games.<sup>7</sup>

Public parks serve as important forums for educational and child-development purposes, especially when children play youth sports. According to the President’s Council on Sports, Fitness, and Nutrition, participating in youth sports “contributes to healthy personal development, education, community building, and our nation’s culture. . . . includ[ing] connecting people and fostering a sense of shared identity.”<sup>8</sup> Roanoke’s public parks play an essential role in promoting these values. Children as young as five years old use Roanoke’s parks to participate in youth sports activities.<sup>9</sup>

As evidenced by incidents across the country, youth sporting events have not been immune to impulsive violence from coaches, spectators, or players—which too frequently involve gun violence. In St. Louis, a parent shot a football coach following an argument over whether a player

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<sup>6</sup> *Sporting Behavior – 2023*, NASO National Officiating Survey (2023), <https://www.naso.org/survey/portfolio/sporting-behavior-2023/>.

<sup>7</sup> *Id.*

<sup>8</sup> See *PCSFN Science Board Report on Youth Sports*, President’s Council on Sports, Fitness, and Nutrition at 5 (Sept. 17, 2020), [https://health.gov/sites/default/files/2020-09/YSS\\_ScienceBoardReport\\_2020.09.01\\_opt.pdf](https://health.gov/sites/default/files/2020-09/YSS_ScienceBoardReport_2020.09.01_opt.pdf).

<sup>9</sup> See *Youth Athletics*, Roanoke Parks and Recreation, <https://www.playroanoke.com/youth-athletics/>.

could start in a game.<sup>10</sup> In Tennessee, a parent who was enraged by a hit in a youth football game involving 11- and 12-year old children, threatened to shoot coaches and child players.<sup>11</sup> The parent had initially stormed the field to yell at the referee and was escorted out of the park, returning later carrying a black bag with a handgun inside.<sup>12</sup>

Children participating in Virginia youth sports have also been victimized by gun violence. In Manassas, several people were injured and taken to the hospital when gunfire erupted near a Benton Middle School field where children were playing flag football.<sup>13</sup> According to local news reports, an argument had broken out among people on the sidelines, and despite attempts by a parent to de-escalate the situation, an individual pulled out a handgun and began to fire shots before running away.<sup>14</sup>

As the examples above show, when people carry guns during youth sports activities at parks, heightened emotions can turn from exasperation to deadly action in a matter of seconds. Permitting guns in a public park that also serves as a sporting environment introduces the risk of impulsive gun use, potentially exposing children to deadly gun violence. Accordingly, Roanoke's

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<sup>10</sup> See Cydney Henderson, *St. Louis Youth Football Coach Shot During Practice by Parent Upset Over Son's Playing Time*, USA Today (Oct. 12, 2023), <https://www.usatoday.com/story/sports/2023/10/12/youth-football-coach-shot-by-parent-upset-over-sons-playing-time/71158704007/>.

<sup>11</sup> See Brandon Tierney & Caleb Wethington, *Parent Threatens Coaches, Players with Gun at Youth Football Game, Police Say*, WJHG Gray Media Group (Oct. 18, 2023), <https://www.wjhg.com/2023/10/18/parent-threatens-coaches-players-with-gun-youth-football-game-police-say/>.

<sup>12</sup> *Id.*

<sup>13</sup> See Bill Hutchinson, *3rd Shooting Near Youth Sports Field in 7 Days Leaves Several Hurt*, ABC News (May 1, 2022), <https://abcnews.go.com/US/3rd-shooting-youth-sports-field-days-leaves-hurt/story?id=84428964>.

<sup>14</sup> See Lindsay Watts, *2 Shot at Youth Football Game in Manassas; Search for Suspect Continues*, Fox 5 Washington DC (May 2, 2022), <https://www.fox5dc.com/news/2-shot-at-youth-football-game-in-manassas-search-for-suspect-continues>.

public officials may reasonably conclude that prohibiting guns in parks where children are engaging in youth recreational activities can help avoid accidental and intentional incidents involving the use of guns.

### CONCLUSION

For the reasons set forth above, the Court should deny Plaintiffs' Motion for Temporary Injunction.

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Respectfully submitted,



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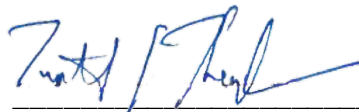
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