

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF CHARLOTTESVILLE

CITY OF CHARLOTTESVILLE, *et al.*,

Plaintiffs,

v.

PENNSYLVANIA LIGHT FOOT MILITIA,
et al.,

Defendants.

Case No. 17000560-00

**MEMORANDUM IN SUPPORT OF
PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

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Plaintiffs, by counsel, respectfully submit this Memorandum in support of their Motion for Preliminary Injunction.

PRELIMINARY STATEMENT

Over the course of two days in August 2017, the City of Charlottesville was transformed from a peaceful college town into a battleground, with residents terrorized and any semblance of civic order destroyed. Defendants' movements, tactics, and uses of weapons and force were planned, coordinated, and executed with military precision. Defendants took their orders not from civic leaders, but from their own private commanders. And the ensuing lawlessness inflicted irreparable harms on the Charlottesville community that continue to be felt today. Now, those who organized last year's mayhem want to perpetuate and deepen those harms with an "anniversary" event. Without injunctive relief from this Court, there is a real and immediate threat that Plaintiffs—and the rest of the City's residents—will once again be irreparably injured by Defendants' disregard for the law.

Before last summer's "Unite the Right" rally, Charlottesville was known as a quiet university town, a home to members of a diverse and actively engaged community, and a thriving hub for small businesses and tourism. The rally changed all of that. The images of uniformed groups storming through the City's streets, parks, and public spaces, in formation, brandishing shields, assault rifles, and other weapons, have marred Charlottesville's reputation. People continue to "associate [Charlottesville] with white supremacists and with the violence that occurred" last year; the City's residents are still suffering from "communal PTSD." As one Plaintiff business owner aptly explained, last year's rally was like a "concussion" from which the City and its residents are only slowly recovering. And although last year's event caused serious harm, suffering similar trauma again this year—while Plaintiffs and others are still healing—would cause "damage [that] would be more lasting, if not permanent." Through this suit, Plaintiffs seek

only to prevent Defendants from further upending ordinary life by once again flooding the streets of Charlottesville with private armies—conduct that Virginia’s Constitution, criminal laws, and common-law tort doctrine prohibit. All four factors governing preliminary relief favor an injunction barring Defendants from violating these state-law guarantees.

First, Plaintiffs—the City of Charlottesville, the Downtown Business Association of Charlottesville, several individual businesses, and three residential associations—are likely to prevail in this case. Several sources of Virginia law seek to ensure public safety by prohibiting the unregulated and coordinated use of force: The Strict Subordination Clause of Virginia’s Constitution mandates that only persons authorized and controlled by the Commonwealth may perform military functions. Virginia’s anti-paramilitary statute prohibits groups from training with and employing dangerous weapons and other techniques in, or in furtherance of, a civil disorder. Virginia’s false-assumption statute bars private parties from assuming law-enforcement functions outside the reach of public accountability. And the common law of public nuisance prohibits any unreasonable interference with a right common to the general public, including the right to use public spaces free from the fear of organized violence. Defendants Jason Kessler, Elliott Kline, Traditionalist Worker Party, Matthew Heimbach, Vanguard America (collectively, the “Alt-Right Defendants”), and Redneck Revolt each violated one or more of these prohibitions at the Unite the Right rally last August. And, left unchecked, there is every reason to believe they will do so again at Defendant Kessler’s planned anniversary event.

Last year, the rally’s organizers, Kessler and Kline, distributed orders instructing “friendlies” how to use shields and other weapons in a coordinated manner against their perceived “enemies.” Vanguard and TWP, including its former leader Heimbach, executed those orders, marching through the City’s streets using their shields, flags, clubs, and fists to batter counter-protesters and seize control of Charlottesville’s parks and public spaces. At Kessler’s invitation,

heavily armed private militia groups in military uniform prowled the perimeter of Emancipation Park, bearing assault rifles and other weapons. And Redneck Revolt organized into “fire teams” and “skirmish lines,” deploying with AR-15s and pistols, determined to keep alt-right groups and the civil authorities from entering Justice Park. There is little reason to expect a different result this year. Kessler has promised that his planned anniversary event will go forward whether or not he receives a permit. Kline has declared himself “ready for another Charlottesville.” And Redneck Revolt has made clear that “[i]t is time to turn [their] guns on [their] real enemies,” wherever and whenever members of the alt-right—including TWP and Vanguard—assemble.

Second, a repeat of last year’s mayhem would only deepen the irreparable harms that the Unite the Right rally has already inflicted on the Charlottesville community. Rather than a place of learning and a community open to all, Charlottesville is now known just as well as a talisman to the alt-right—an ongoing flash point in a broader campaign of alt-right militarism. As Kline has explained, the rally sent a message that the alt-right will not give up “without a fight.” Groups like TWP and Vanguard have heard that message loud and clear: Since the rally, TWP has exhorted its members to “be prepared at all times to fight,” and Vanguard has declared that it “will not stop until total victory is achieved.” For militant left-wing groups like Redneck Revolt, the prospect of the alt-right’s return is a rallying call to “take the defense of our communities into our own hands,” whether legally or not.

The looming threat that Charlottesville will once again be forced to play host to coordinated political violence has destroyed any semblance of regularity for the City’s inhabitants, including Plaintiffs. The City has suffered reputational injuries that cannot be quantified merely by a loss of tourism and tax revenue. There is a more fundamental “lack of confidence that Charlottesville is a good place to retire, or a good place to open a business, or a safe place to send your kids to school.” The City’s businesses face an incalculable loss of customer goodwill. And its

homeowners and residents must live with the anxiety of knowing that the next event may result in even more violence, and more bloodshed. None of this is lost on Defendants. Kessler has boasted that his August 2017 event, and the prospect of a second Unite the Right rally, have subdued tourism and business and robbed Charlottesville's residents of a "normal life." And Redneck Revolt openly acknowledged after last year's rally that its coordinated display of force added to the anxiety of some of the City's residents.

Third, the balance of equities favors the injunctive relief Plaintiffs seek. An order from this Court prohibiting Defendants from reprising their coordinated use of force would neither rob them of a platform to voice their political views nor implicate their right to bear arms. By contrast, preparing for a repeat of last year's events would require the City to divert substantial additional resources to policing and crowd control. Local businesses could be forced to close their doors. Members of the community would feel compelled to take extraordinary measures to protect their lives and property. And the hope of recovering would be shattered, as residents would see their town once again besieged with military-style violence.

Finally, an injunction that would reduce the threat of future violence while preserving Charlottesville's public spaces for political discourse is plainly in the public interest. "The First Amendment does not protect violence." *N.A.A.C.P. v. Claiborne Hardware Co.*, 458 U.S. 886, 916 (1982). An injunction that keeps the streets and parks of Charlottesville open for the free expression of ideas, allowing protestors and counter-protestors alike to speak freely without the threat of forcible suppression, would honor and serve that highest of civic values: that ideas, even bad ones, should be met with more and better ideas—not with violence.

In sum, Plaintiffs seek nothing more than to preserve the peace of the public square by preventing a recurrence of the unchecked use of coordinated force that plunged the City into chaos

last year. Plaintiffs respectfully request that the Court grant their Motion for Preliminary Injunction.

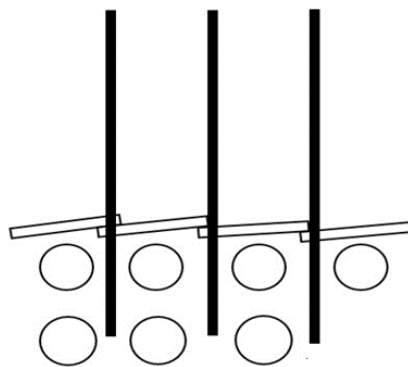
FACTUAL BACKGROUND

A. The Road to “Charlottesville 2.0”

Last year, Charlottesville became the focus of an increasingly tense discourse on race in America. In February, the Charlottesville City Council voted to remove statues of Robert E. Lee and Thomas J. Jackson from the grounds of what are now known as Emancipation Park and Justice Park, respectively. In response, alt-right leader Richard Spencer and others, including Defendants Jason Kessler, TWP, and Vanguard America, protested the Council’s decision at an unplanned and unpermitted rally at Justice Park. Ex. 5-1 at 25–26. That evening, Spencer and his followers marched into Emancipation Park carrying lit torches, chanting “blood and soil”—a Nazi slogan—and arranging themselves in ranks five lines deep in front of the Lee statue. Ex. 5-1 at 27. These two events would come to be known by members of the alt-right as “Charlottesville 1.0.” See Ex. 5-2 at 1.

Almost immediately thereafter, alt-right leaders began planning an encore. Defendant Kessler filed a request for a permit to hold an event at Emancipation Park on August 12, 2017—one he dubbed the “Unite the Right” rally. Using the online chat platform Discord, Defendants Kessler, Kline, and others began discussing and organizing the rally using the “Charlottesville 2.0” server. Ex. 5-3 at 19:15–33. As one user described it, the server was “for closed, top super secret communications intended for the elite inner circle of the alt-right,” and not to be “distribute[d] widely.” Ex. 5-4. Kessler and Kline moderated the discussion and controlled access. Exs. 5-5, Ex. 5-6. Other Defendants, including Heimbach, Vanguard, and TWP, also participated. Ex. 5-7 at 3.

As Plaintiffs have already shown, dozens of rank-and-file attendees used Discord to broadcast their eagerness to transform downtown Charlottesville into a battleground. *See* Pls.’ Am. Compl. ¶ 176. The planning materials circulated by organizers were no less militarized. For example, on July 7, 2017, a document titled “Shields and Shield Tactics Primer,” providing detailed instructions on the coordinated use of shields during combat, was uploaded to the Charlottesville 2.0 server. *See* Ex. 5-8. The document’s purpose was to get each group “on the same page, so that we may present a squared away force to counter . . . our enemies.” *Id.* at 1. The primer explained that rally attendees should stand in formation, with their feet staggered and shoulder-width apart, holding their shields with their left hands, leaving their right hands free to wield a “flag pole, stick, bludgeon, etc.” *Id.* at 3. The shield walls would be composed of two lines: a defensive first line, and a second line to act as “the offensive component” armed with “longer weapons” that would “make up the teeth of [the] shield wall.” *Id.* The primer illustrated how, as the shield wall advanced, the second line would “push people away from the wall” using poles or other long weapons:



This instructional document anticipated “4 or 5 lines of people with shields, so that the front line can be consistently refreshed.” *Id.* at 4. The document closed by encouraging attendees to “practice as a solid group” after arriving in Charlottesville. *Id.* at 4–5.

In his capacity as a co-organizer of the rally, Defendant Kessler personally recruited attendees to participate in these formations. On July 16, he used Discord to issue a “general call for people to help with general event security” by forming “a large shield wall” in Emancipation Park. Ex. 5-9 at 133. “The more people we get,” he explained, “the larger and more effective” this “highly organized” technique would be on August 12. *Id.* Kessler concluded by attaching a document—the “Shields and Shield Tactics Primer”—that “has all of the information needed to become familiar with what we will be doing.” *Id.* at 134.

Defendant Kline transmitted similarly detailed instructions for what he called “Operation Unite the Right Charlottesville 2.0.” *See* Ex. 5-10. He did so through two separate documents: “OpOrd” (i.e., “Operational Orders”), sent to group leaders on August 1, 2017; and “General Orders,” circulated to all members of the Charlottesville 2.0 Discord group on August 10, just two days before the rally.¹ As Kline explained in the former document, “we see a high likelihood of violence during the rally.” Ex. 5-10 at 9. He encouraged individual groups to “bring their own shields” for use in both a “Strong Shield Center” and a shield wall along the perimeter of Emancipation Park. *Id.* at 4, 9. Kline pledged to follow up with additional “rules of engagement,” as well as “a list of High Value Targets” within the alt-right’s “enemies.” *Id.* at 2, 9.

The General Orders, too, were not an exercise in simple event planning, but rather a highly detailed operational directive to “be shared in EXTREMELY VETTED circles.” Ex. 5-11 at 1. The document explained that “security forces in form of the shield wall will be deployed in whatever manner is most effective to reduce the threat” posed by the alt-right’s “enemies.” *Id.* at 1, 8. The General Orders explicitly contemplated “tak[ing] the ground by force.” *Id.* at 3. Female attendees were urged to “stay off the front lines,” given the expectation of violence. *Id.* at 2. Even

¹ The documents’ file names are “OpOrd1_LeadershipOnly.pdf” and “OpOrd3_General.pdf,” leading one to assume that an “OpOrd2” was issued, as well. Plaintiffs have not been provided with such a document in discovery.

leaving the rally was planned with military precision: The organizers would “run[] exfiltration convoys” and leave their security forces to “fight[] a rearguard action,” if necessary. *Id.* at 8–9.

Defendants Vanguard America and TWP came to Charlottesville fully prepared to use organized force. As Vanguard’s leader stated in advance of an earlier rally, “we want to be like ants—we’re a colony, and we just go and destroy everything.” Ex. 5-12 at 2:25. And according to TWP’s internal “Event Coordination Notes,” issued in advance of August 12, the group was “preparing for the worst” and “expected to take the lead if fighting is necessary.” Ex. 5-13 at 6–7. To that end, TWP planned to deploy “a full shield squad” that would be “under direct command of a squad leader from our own ranks”—Defendant Cesar Hess.² *Id.* at 2. TWP members were to be divided into three tactical teams—Alpha, Bravo, and Charlie—with each member “assumed to be . . . willing and able to fight” as part of Bravo Team. *Id.* at 5. The leadership’s military-style uniforms would enable “better command and control of situations on the ground.” *Id.* at 2. To facilitate such coordination, TWP scheduled “an early morning of preparation” and “basic training” on August 12. *Id.* at 3.

Defendant Heimbach was instrumental in TWP’s preparation to engage in coordinated force in Charlottesville. As he explained in the group’s private Discord server, TWP purposefully equipped itself to be able to “win the fight” against “the enemy.” Ex. 5-14 at 14. Heimbach informed TWP members that “[w]e will have shields, would love more.” *Id.* at 13. On July 30, he estimated that TWP’s “frontlines will have 12 riot shields.” *Id.* at 50. “[A]longside our [L]eague of the [S]outh and [V]anguard [A]merica allies,” he commented, “we’ll have an unbreakable line.” *Id.* Party members’ dress was to correspond with the organization’s hierarchy, for “everyone is gonna need to know who the officers are in order to be able to take orders.” *Id.*

² Plaintiffs have been unable to serve process on Defendant Cesar Hess.

at 52. And the participation of women in non-combat capacities would “free[] up our fighting men.” Ex. 5-15.

Defendant Redneck Revolt, a self-described “anti-racist, anti-fascist community defense formation,” Ex. 5-16 at 1, issued a “Call to Arms for Charlottesville” in advance of the Unite the Right rally, *see* Ex. 5-17. The group pledged to “dust[] off the[ir] guns” in order to repel the “violence” and “power” of alt-right organizations expected to attend. Ex. 5-17 at 1, 3. An instructional document distributed to each Redneck Revolt branch, entitled “Introduction to Tactical Firearms,” provides insight into the group’s armed presence at public events. The document recommends a range of weapons suitable for a variety of purposes, including “battle pistol[s]” and rifles for “sharpshooting” and “combat.” Ex. 5-18 at 19–22, 25. As “next steps,” Redneck Revolt advises recipients to “[p]ractice shooting often,” “[t]rain with a group,” and “[o]rganize a fireteam.” *Id.* at 39. A “fireteam,” the document specifically instructs, consists of a group of four: a “breaching” element at the front armed with a handgun or shotgun; members carrying “standard rifles” in the second and fourth positions; and a member in the third position carrying a “long range or suppressive fire” weapon. *Id.* at 38. The document also provides tips for “firing in group situations.” *Id.* at 37. Finally, Redneck Revolt’s instructional document advises each branch to develop its own “rules of engagement” that determine “[w]hen and why . . . deadly force [may] be used.” *Id.* at 40. Members are admonished that “[t]his is deadly serious work we are engaging in,” for the slightest mistake could “accidentally kill” nearby persons. *Id.* at 30, 37.

These operational documents describe preparation for battle, not political debate. To be sure, some Defendants publicly disclaimed any intent to engage in violence at the rally. Defendant Kessler, for one, stated at a press conference on July 11 that “there is no expectation of violence—we are planning a peaceful rally.” Ex. 5-19 at 11:45. Yet in his capacity as an organizer of the

rally, he conveyed precisely the opposite message to attendees. Kessler advised users of the “Charlottesville 2.0” Discord server to “bring picket signs that can be used as sticks to bludgeon our enemies if they get violent.” Ex. 5-9 at 8. He instructed attendees not to openly carry firearms, given that “[w]e ultimately don’t want to scare [counter-protestors] from laying hands on us.” *Id.* at 7. Open-carry would thus deprive alt-right rallygoers of the “chance to crack some Antifa skulls in self-defense.” *Id.* at 19. Kessler aimed to enlist “enough people to win a street fight”—to “whoop that Commie, anti-white ass all over God’s green Earth.” *Id.* at 47, 102. Kessler contacted a number of heavily armed militia groups, including the Virginia Three Percenters, to “provide a security presence” at the rally. Ex. 5-20 at 5. And he responded approvingly when his contact in the Three Percenters promised to “walk in there with a thousand men and crush these little cunt rags for good.” Ex. 5-21 at 44.

The Defendants in this case came to Charlottesville equipped for a violent confrontation in public spaces. Unfortunately, that is exactly what materialized.

B. August 11: The Torchlit March

Any pretense that alt-right attendees intended to peacefully assemble was obliterated the night before the rally during a torchlit march through the University of Virginia campus. The march was not authorized by the University, and Defendant Kline and others had intended to keep it a secret, advising attendees that they should “NOT mention” the event “outside of extremely vetted circles,” and should “NOT post about it on social media until after.” Ex. 5-11 at 7. By the day of the march, however, Kline had learned that opponents of the alt-right “kn[e]w of the torchlight march” and were planning a “counter protest.” Ex. 5-22. He nevertheless ordered attendees to assemble with their torches. *Id.*

Hundreds of torch-bearers streamed into the UVA campus, barking like dogs and chanting “Jews will not replace us!” and other intimidating slogans. Ex. 5-58 at 0:10, 0:24. Torchbearers

were organized into columns, two-by-two. Ex. 5-24 at 4:30–5:00. “Guards” were chosen to march alongside the columns based on their willingness to “get physical” with anyone who stood in their way. Ex. 5-1 at 117; *see also* Ex. 5-25 at 2 (“Organizers asked for all white men over 190 pounds marching not to carry torches, but to march at the side of [the] procession as its security detail.”). But instead of an organized resistance, the marchers encountered only a small group of students and counter-protesters gathered around the Jefferson statue near the Rotunda. Ex. 5-24 at 4:28; *see also* Ex. 5-26 at 2–3.

The alt-right marchers moved in, encircled the Jefferson statue, and surrounded their opponents. Ex. 5-58 at 1:10–1:41; *see also* Ex. 5-24 at 6:10. The torchbearers then advanced, punching and kicking the small group of counter-protesters, and even hurling lit torches from within the crowd. Ex. 5-58 at 1:27–1:34; Ex. 5-24 at 6:08–6:27. As Richard Spencer remarked, the alt-right “flanked” and then “literally surrounded the enemy,” outnumbering the counter-protesters at least “25-to-1,” and occupied the space “in spades.” Ex. 5-27 at 3:15–4:02. “We just got in there and cleaned that shit up,” one marcher boasted the next day. Ex. 5-28 at 13:57. Another recalled having “kicked the shit out of a [counter-protestor] at [the] torchlit rally,” even though “it probably isn’t legally allowed.” Ex. 5-29 at 31:30. Defendant Kessler tweeted that the evening’s clashes were an “[i]ncredible moment for white people who’ve had it up to here & aren’t going to take it anymore.” Ex. 5-30. This violence was but a small preview of what was in store for the following day.

C. August 12: The Rally

The next day, the Alt-Right Defendants, along with hundreds of others, marched into Charlottesville and violently occupied Emancipation Park. Defendant Kline led a column of Vanguard America members dressed in matching uniforms, wearing helmets, and carrying shields and flags, toward the park. Exs. 5-31, 5-32. Along the way, the Vanguard contingent encountered

a small group of counter-protestors. Ex. 5-33. Kline ordered the column to halt and reformed the lines, organizing the Vanguard members into formation and calling shield carriers to the front. *Id.* He then led Vanguard forward as the shield carriers pushed through the counter-protestors, resulting in a clash that left two women badly bloodied. *Id.* Alt-right attendees carrying shields similarly rammed through a group of clergy standing passively on the steps of Emancipation Park. They did so after being ordered to “fuckin’ go through them—right there! Walk through them! Shield wall—go! Go!” Ex. 5-29 at 6:40. Defendant Kessler, too, marched to Emancipation Park with a contingent of Vanguard America members. Ex. 5-34. He praised the alt-right shield carriers who plowed through the clergy line, exclaiming that “[w]e broke through Cornel West! . . . Cornel West thought he could stop us. Nothing can stop us!” Ex. 5-28 at 7:11, 7:34.

Once they reached Emancipation Park, Vanguard America members formed into shield walls, declaring that “we’re taking this fucking field!” Ex. 5-35 at 2:30. The group used its shields to restrict access to the park to those they perceived as “friendlies,” and excluded members of the public, including members of the press. Ex. 5-35 at 3:46–4:20. Asked whether he had any safety concerns, a Vanguard member gestured toward the counter-protestors assembled outside the park and replied that he did—for “some of those guys.” Ex. 5-36 at 1:13. Vanguard members were key contributors to the multi-group shield wall that formed on the southern edge of Emancipation Park—just as Defendant Kline’s operational instructions had envisioned. *See, e.g.*, Ex. 5-37. And throughout the morning, Vanguard members joined in coordinated attacks, charging out of the park to clash with counter-protestors in the streets below. In one particularly violent assault, attendees carrying Vanguard shields streamed down the stairs at the southeast corner of Emancipation Park, slamming into counter-protestors and beating them with their fists, shields, and other weapons. Ex. 5-36 at 4:35–5:00.

That morning, members of Defendant TWP exited the Market Street parking garage and marched westward toward Emancipation Park behind Defendant Heimbach, who served as TWP's leader on August 12. TWP members wore matching uniforms and helmets and carried clear riot shields, many of them bearing the insignia of "TradWorker." Heimbach shouted "shields up!" to his troops as they plowed through a line of counter-protesters standing on Market Street. Ex. 5-23 at 0:06. TWP's actions conformed precisely to the instruction provided in the "Shields and Shield Tactics Primer": Shield bearers formed a front line that slammed into counter-protesters, while a second line—the "teeth" of the shield wall—used flagpoles and other weapons to batter their opponents. Ex. 5-23 at 0:14–0:20. TWP entered Emancipation Park amid an instruction to "push through! Push through! . . . Push through! Don't stop! Go! Go!" Ex. 5-38 at 4:19.

Once inside Emancipation Park, Defendant Heimbach shouted, "form up the shields!" *Id.* at 5:12. TWP's "Commanding Officer," Defendant Cesar Hess, worked with two other alt-right groups to "create two shield walls"—one at the southeast steps of Emancipation Park, and one adjacent to the stairwell. Ex. 5-39 at 2. To this end, Hess exercised command authority over TWP members and other "fighters" sent to assist TWP. *Id.* Among his many orders were "hold the fucking line!" Ex. 5-40 at 9:00; "on the stairwell!" Ex. 5-41 at 21:10; "form the fucking line!" Ex. 5-42 at 3:27; and "get ready to fucking fight!" Ex. 5-40 at 9:19. TWP members complied with Hess's commands, repeatedly exiting the park in organized groups to attack counter-protesters with shields and clubs. It is no wonder that TWP's then-director later wrote that the group came "prepared to fight" in Charlottesville. Ex. 5-43 at 1.

A number of witnesses who recorded their experiences described these violent techniques in real time. One attendee described TWP's initial offensive as "pretty brutal"—"like barbarians on a battlefield with their . . . riot shields and sticks and billy clubs." Ex. 5-44 at 2:39. As a videographer explained, alt-right shield carriers "make this line, and then they'll approach the

[counter-protestors] in that aggressive posture with weapons-bearing, and instigate. They didn't come here to peacefully rally at all—they came here to battle, for war.” Ex. 5-45 at 13:02. One reporter perceptively remarked that “it looks like the right wing has practiced these formations in advance”—ones that resembled a “battalion” or “phalanx.” Ex. 5-46 at 8:03. Others characterized Emancipation Park as a “war zone,” Ex. 5-47 at 0:55, and “a complete battleground,” Ex. 5-48 at 12:46.

Two blocks away, Defendant Redneck Revolt was deploying at Justice Park. According to the group's own “Reportback,” “[a]pproximately 20 Redneck Revolt members created a security perimeter around the park, most of them open-carrying tactical rifles.” Ex. 5-49 at 2; *see also* Ex. 5-50 at 28:43 (“Redneck Revolt had 19 people deployed on the perimeter of Justice Park on that Saturday morning . . . with 12 of us carrying firearms, primarily AR-15s—semiautomatic weapons.”).³ The group “conduct[ed] [itself] with a hierarchy—with clear organization, with lots of intel, [and] huge amounts of planning.” Ex. 5-50 at 32:04. As one of its members explained, Redneck Revolt had a “clear mission” on August 12: to ensure that “cops,” “the State,” and alt-right attendees were deterred from entering Justice Park due to the group's implicit threat to use organized force. Ex. 5-51 at 8:32. Redneck Revolt sought to “seize space” and make the park a “temporary autonomous zone” in which law enforcement could not operate. *Id.* at 31:30. The group's armed deployment represented a “struggle” against “state power.” Ex. 5-50 at 35:22.

To that end, Redneck Revolt members dispersed into three “fire teams” around the perimeter of Justice Park. Ex. 5-49 at 2. Its members coordinated their positions by maintaining

³ The group now claims that “approximately 14 – 18 Redneck Revolt members were in Charlottesville on August 12. Of those, approximately 9 – 11 members carried firearms . . . ; approximately 7 or 8 members carried some brand of the ArmaLite platform rifle (‘AR-15’); and approximately 2 or 3 members carried pistols.” Ex. 5-55 at 18. Plaintiffs expect the evidence to establish that at least 10 Redneck Revolt members carried semiautomatic weapons in Charlottesville on August 12, and that at least 2 others carried pistols.

radio communication throughout the day. *See* Ex. 5-52 at 0:52. In the course of “project[ing] . . . force and power,” Ex. 5-51 at 9:05, Redneck Revolt had several “intense encounter[s] with the enemy,” Ex. 5-53 at 35:23. The group’s members repeatedly followed orders to “form[] a unified skirmish line” against alt-right demonstrators passing by. Ex. 5-49 at 2; *see also* Ex. 5-50 at 32:46 (“Throughout the day we faced off with various groups of Nazis.”). As one Redneck Revolt member recounted, “[f]or eight hours we held off Nazis and kept cops out of the park.” Ex. 5-54 at 5.

By 11:30 a.m., the Unite the Right rally was declared an unlawful assembly. But even the threat of arrest did not deter alt-right attendees from using their paramilitary tactics to continue exerting control over Charlottesville’s public spaces through the coordinated use of force. TWP and Vanguard America continued participating in multi-group shield walls—in the vicinity of advancing riot police—which Defendant Kline took the lead in commanding. *See* Ex. 5-56 at 7:15; Ex. 5-57 at 21:21. (Kline had commented the night before that “I run this as a military operation. . . . I was in the army.” Ex. 5-25 at 4.) Persons carrying Vanguard and TWP shields joined a group of attendees physically resisting law-enforcement efforts to clear the park. Ex. 5-45 at 19:20–19:45; Ex. 5-57 at 21:21–22:03. Defendant Kessler eventually ordered the alt-right attendees to begin marching to McIntire Park. Ex. 5-24 at 14:29. After arriving there, Kline threatened to send “at least 200 people with guns” back to Emancipation Park in defiance of police orders. Ex. 5-58 at 9:12. The day’s mayhem culminated in death, when James Fields plowed his car into a crowd of counter-protesters, killing 32-year-old Heather Heyer and injuring many others. Fields had spent much of the morning carrying a Vanguard America shield within the ranks of imposing alt-right shield walls. *See, e.g.*, Exs. 5-59, 5-60, 5-61, 5-62.

D. The Aftermath and the Risk of Future Harms

The Alt-Right Defendants have celebrated the rally as both a success and a blueprint for future events. Defendant Heimbach declared that “[w]e achieved all of our objectives” and “did an incredibly impressive job.” Ex. 5-63 at 2. Defendant TWP announced that it had “decisively won this battle.” Ex. 5-64. Defendant Kline has stated, “I’m proud of what we did” on August 12. Ex. 5-65 at 4:15. He regards last summer’s rally as “a positive thing”—“a golden era” in alt-right organizing. *Id.* at 3:49, 4:10. And Defendant Kessler has extolled the Unite the Right rally as “a defining moment in American history.” *Id.* at 6:50.

The Alt-Right Defendants remain entirely untroubled by their coordinated aggression on August 12 because they have strategically distorted the legal concept of self-defense. Defendant Heimbach stated in the rally’s aftermath that “[t]hese radical leftists truly are trying to kill anyone they disagree with,” thereby ascribing murderous intent to attendees who did not share his political views. Ex. 5-66 at 5:56. Kessler continues to maintain that the alt-right’s coordinated violence on August 12 was legally justified, insisting that “no one started violence on our side,” Ex. 5-3 at 23:12—not even the shield-carriers who stormed out of Emancipation Park to clash with counter-protestors. *See also* Ex. 5-24 at 14:44 (“Our people were not being violent.”). Kessler also considers the KKK leader who fired his pistol at a counter-protestor to be “a damn hero.” Ex. 5-67 at 11:20.

What the Alt-Right Defendants considered a triumph was a disaster for the City and the other Plaintiffs, which include small businesses and neighborhood associations. The coordinated use of force on display during the rally undermined the sense of safety and security previously enjoyed by community residents, including the Plaintiffs. For some Plaintiffs, Defendants’ conduct caused sleeplessness, acute anxiety, fear, and physical symptoms of emotional distress that, for some, continue to this day. *See* Decl. of Michael Rodi (“Rodi Decl.”) Ex. 1, ¶ 6; Decl. of

Joan Fenton (“Fenton Decl.”) Ex. 2, ¶ 5; Decl. of Kristin Clarens (“Clarens Decl.”) Ex. 3, ¶ 4. Even “the sight of people open carrying firearms has been traumatic regardless of who is carrying the firearm.” Fenton Decl. Ex. 2, ¶ 5.

Parents sent their children away in the days after the rally, Rodi Decl. Ex. 1, ¶ 6, and have changed the playgrounds where their children play, for fear that a “playground is too exposed,” Clarens Decl. Ex. 3, ¶ 5. Since August 12, “[c]ommunity groups . . . have decided to move or cancel events . . . in public spaces near the downtown mall out of concerns for safety.” *Id.* ¶ 6. One of these was a school-supply drive for elementary-age children originally scheduled for August 19, 2017. *See* Ex. 5-68 (“We cancelled because we started having a number of calls from parents, and their concerns for coming down on the pavilion, and especially on the mall giv[en] the past week[’s] activities.”). Members of Plaintiff residential associations wait anxiously, wondering when their communities will next be invaded by armed columns marching through and over their property. They “feel too scared to be supportive of their community in the ways they did before the rally.” Clarens Decl. Ex. 3, ¶ 7. One Plaintiff neighborhood association has rescheduled its annual picnic because it had been set for the weekend of August 11 and 12, 2018. *See id.* ¶ 9. In short, “[i]t is like the city and its residents have communal PTSD.” Fenton Decl. Ex. 2, ¶ 5.

Businesses that closed in anticipation of the rally incurred immediate costs, including expenditures on security measures and loss of business. But the long-term harm to Charlottesville’s business community has been far more damaging. The reputational injury the City has suffered, and the associated loss of tourism and business, has led to incalculable financial losses and diminished goodwill. *See, e.g.*, Decl. of Allison Ewing (“Ewing Decl.”) Ex. 4, ¶¶ 2–3; Rodi Decl. Ex. 1, ¶ 7 (describing “a tremendous dropoff in foot traffic” on the downtown mall). In the months following the rally, many people refused to come downtown, and “customers from

the counties neighboring the city” also stayed away. Fenton Decl. Ex. 2, ¶ 7. “Since the rally, there is a lack of confidence that Charlottesville is a good place to retire, or a good place to open a business, or a safe place to send your kids to school.” Ewing Decl. Ex. 4, ¶ 5. Instead of thinking of Charlottesville as “one of the best small cities to live in,” people “associate the town with white supremacists and with the violence that occurred at the rally.” Ewing Decl. Ex. 4, ¶¶ 4–5.

None of this is lost on Defendants. Kessler has boasted that last summer’s rally disrupted “normal life” in Charlottesville and that “businesses will recover, their tourism will recover” only once the alt-right ceases to return there. Ex. 5-65 at 1:11:25. And Dwayne Dixon, an outspoken Redneck Revolt member who patrolled the sidewalk outside Justice Park with an AR-15 during the rally, has acknowledged that the group’s activities frightened and alarmed many members of the public. According to Dixon, although one local anarchist group “wanted us there, the other organizing groups didn’t.” Ex. 5-50 at 29:05; *see also* Ex. 5-69 at 17:31 (“We weren’t necessarily a welcome presence.”). Dixon has frankly acknowledged that Redneck Revolt created “a lot of anxiety and uncertainty”—that “we were just another component to add to the fear, presumably.” Ex. 5-50 at 30:22, 30:31. But even though many people were “queasy with the fact that we were deploying arms,” Ex. 5-51 at 14:06, Redneck Revolt “w[as]n’t going to withdraw to soothe people’s anxiety,” Ex. 5-50 at 30:37. Dixon has acknowledged that “the risks were enormous,” for any alt-right attendee “could have grabbed one of us,” “g[otten] ahold of the gun and turn[ed] it back on us, or on anyone else around.” Ex. 5-50 at 1:36:59. Another Redneck Revolt member present in Charlottesville recalled that “there were so many ways that something truly catastrophic could go wrong.” Ex. 5-53 at 32:11. Such fears were warranted, given that Redneck Revolt “did not provide any training or instruction to members in preparation for August 12.” Ex. 5-55 at 4.

Despite understanding the harm and damage that his actions have caused, Defendant Kessler has consistently maintained over a series of months that he plans to organize an

anniversary rally in Charlottesville on August 11 and 12, 2018. *See, e.g.*, Ex. 5-70 (“Everybody get ready cause we’re doing another rally August 11–12th 2018.”); Ex. 5-71 (“[W]e HAVE TO go #BackToCharlottesville”); Ex. 5-72 (“WE WON’T BE STOPPED”); Ex. 5-73 at 5:47 (“Whether there’s a permit or not, we’re still going to do it.”); Ex. 5-74 at 3 (“[O]ne way or the other we’re coming back.”).

Defendant Kessler’s upcoming rally, moreover, threatens to cause substantial additional harm. True enough, over the past few months, Kessler has publicly endorsed “non-violent resistance” in the mold of “Gandhi and Jesus Christ.” Ex. 5-75 at 18:47, 23:46. But Kessler’s peace-loving rhetoric cannot be taken at face value—just as he was assuring the public that last year’s rally would remain non-violent, Kessler was privately offering advice on how to “crack some Antifa skulls” and “bludgeon our enemies.” Ex. 5-9 at 8, 19. By his own admission, moreover, Kessler now seeks to drag Charlottesville “into the bowels of Hell.” Ex. 5-76. He is in the process of recruiting “hardened veterans” from last year’s rally who “have the traits that we need to be able to win this fight.” Ex. 5-77 at 7:13; *see also* Ex. 5-65 at 38:05 (describing himself and others as “veteran soldiers”). Kessler has advised those in the alt-right to “get tough” and “do it quickly.” Ex. 5-65 at 1:00:22. He believes that “we cannot trust law enforcement . . . to keep us safe”—“we have to build in safeguards.” Ex. 5-78 at 9:40. Of course, among the security measures he selected last year were alt-right shield walls and the use of unauthorized militias—the very tactics that transformed Charlottesville into a battleground. On June 5, 2018, Kessler stated that he intends to employ shield carriers as a security force at his upcoming rally. *See* Ex. 5-95 at 15:20. He has remained in touch with the militia community, having attended a “Patriot

Summit” in April along with two Defendants in this suit (Joshua Shoaff and Richard Wilson⁴). Ex. 5-79 at 0:18; *see also* Ex. 5-96. Nor can there be any assurance that Kessler’s planning will remain in the open, given his recent statement that, “as we move forward, perhaps we’ll create a private forum or something where people can talk about the event.” Ex. 5-75 at 32:52.

Defendant Kline, likewise, has left no doubt about his future intentions. After dusk on October 7, 2017, Kline led a contingent of 40 or 50 white nationalists in yet another torchlit procession to Emancipation Park. He concluded the event by repeatedly shouting into a megaphone, “We will be back!” Ex. 5-80 at 10:08. Since then, Kline has publicly stated that he is “ready for another Charlottesville,” despite initial concerns about the fallout from last summer’s rally. Ex. 5-65 at 4:40–5:00. He predicts that there will be “many more battles” at which “people are gonna lose life and limb”—“it’s gonna be terrible.” *Id.* at 59:17–59:37. His message to prospective attendees is that “you need to prepare. You need to toughen up—you need to harden up, because this is gonna be a lot worse moving forward. Charlottesville was nothing.” *Id.* at 1:00:13. In Kline’s view, returning to Charlottesville will convey to the alt-right’s “enemies” that members of the movement will not give up “without a fight.” *Id.* at 1:06:09, 1:08:07. He has warned that “we will go here every fucking year until there’s a fucking ethno-state.” *Id.* at 1:09:58.

As prominent participants in the first Unite the Right rally, members of Defendants TWP and Vanguard America are exactly the type of “veteran soldiers” Kessler is seeking to recruit for this year’s event. And their own public statements strongly suggest a desire to return and initiate combat in Charlottesville once again. In the week after August 12, Defendant Heimbach declared, “We will be back Charlottesville, and we will be back with more men. More women.” Ex. 5-81

⁴ Defendant Shoaff (a.k.a. “Ace Baker”) has entered into a consent decree along with his organization, American Warrior Revolution, and Plaintiffs’ claims against Defendant Wilson (a.k.a. “Francis Marion”) and his organization, American Freedom Keepers National Committee, Inc., are the subject of a pending motion for default judgment.

at 1. Notwithstanding the violence of last year’s rally, TWP’s former director announced that “I still stand with Jason Kessler.” Ex. 5-82. Defendant Heimbach shared this post without comment. *Id.* Following the rally, TWP’s then-director celebrated the alt-right’s recent evolution into “a proven street fighting faction.” Ex. 5-39 at 5. He even implored TWP members to “be prepared at all times to fight” with “shields, helmets, and black bloc uniforms.” Ex. 5-83 at 2. Defendant Vanguard America has demonstrated similar enthusiasm for militarized action in the future. As the group’s website explains, Vanguard members are “men of action” who “will not stop until total victory is achieved.” Ex. 5-84 at 2. And Vanguard’s leader, Dillon Hopper, stated in an interview two months after the Unite the Right rally that “you should be prepared for war at all times.” Ex. 5-85 at 25:56.

Redneck Revolt has foreshadowed its upcoming conduct with even greater clarity. One of the group’s central goals is to provide an organized armed presence at right-wing demonstrations, due to its antipathy toward authorized law enforcement. Redneck Revolt refuses to “allow the state to have a direct monopoly on the use of force,” Ex. 5-86, and believes that “[w]e have to be prepared to take the defense of our communities into our own hands,” Ex. 5-87; *see also* Ex. 5-88 at 2 (claiming that “defense of . . . community” is “not something you ask someone else to do for you”). Redneck Revolt member Dwayne Dixon has similarly insisted that “it’s not the cops who are gonna keep us safe—it’s us.” Ex. 5-50 at 22:49; *see also* Ex. 5-51 at 15:16 (“Why would you trust the state? . . . The state is never gonna save you.”). Accordingly, Redneck Revolt intends to continue “building stronger defense networks” with groups like Defendant Socialist Rifle Association.⁵ Ex. 5-49 at 3. As one Redneck Revolt member explained on the organization’s official podcast, “we’re definitely tweaking our tactical models to be able to respond more

⁵ Plaintiffs have been unable to serve process on Defendant Socialist Rifle Association.

effectively next time.” Ex. 5-53 at 41:52.

Redneck Revolt openly acknowledges that its coordinated use of weaponry could result in bloodshed. In an interview on May 19, 2018, Redneck Revolt decried the political left’s “fetishization of non-violence.” Ex. 5-89 at 2. Among the group’s core convictions is that “[i]t is time to turn our guns on our real enemies.” Ex. 5-90 at 4. Redneck Revolt members “are not pacifists” and expect “to act militantly” in the future. *Id.* In the words of Dwayne Dixon, “it’s time to fucking fight!” Ex. 5-51 at 3:24. He has even suggested that body armor would be a necessity for future events. *Id.* at 28:39.

In addition, Redneck Revolt avowedly pays no heed to whether its intentional displacement of law enforcement violates state law. The group acknowledges that its conduct “may not always conform to what is legal.” Ex. 5-91. For Redneck Revolt, the ability to engage in the collective use of force trumps “the provisions of any law.” Ex. 5-89 at 2. Dwayne Dixon, too, regards the notion of legality as “a useless question,” because “I am not interested in how the law constrains . . . my anarchist politics.” Ex. 5-92 at 5.

But Plaintiffs do care. For them, ensuring that Defendants do not engage in future lawlessness is critical. If Defendants “return to Charlottesville in the same capacity—as organized, coordinated, and armed groups—it would be like getting a second concussion while you’re still healing from the first one: . . . the damage would be more lasting, if not permanent.” Rodi Decl. Ex. 1, ¶ 8.

LEGAL STANDARD

Against this backdrop, Plaintiffs seek a narrow preliminary injunction to prevent Defendants from engaging in the coordinated use of weaponry in Charlottesville once again. For preliminary relief, a plaintiff must show “(1) that he is likely to succeed on the merits, (2) that he is likely to suffer irreparable harm in the absence of preliminary relief, (3) that the balance of

equities tips in his favor, and (4) that an injunction is in the public interest.” *Wings, LLC v. Capitol Leather, LLC*, No. CL–2014–9, 2014 WL 7686953, at *5 (Va. Cir. Mar. 6, 2014) (quoting *Winter v. Nat’l Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)).

Because the “purpose of a preliminary injunction is merely to preserve the relative positions of the parties until a trial on the merits can be held[,] . . . a preliminary injunction is customarily granted on the basis of procedures that are less formal and evidence that is less complete than in a trial on the merits.” *G.G. ex rel. Grimm v. Gloucester Cnty. Sch. Bd.*, 822 F.3d 709, 725 (4th Cir. 2016) (quoting *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981)), *vacated on other grounds*, 137 S.Ct. 1239 (2017). For instance, in ruling on a motion for preliminary injunction, courts may consider “hearsay or other inadmissible evidence,” *id.* at 726, and assertions made by affidavit, *Wood v. City of Richmond*, 148 Va. 400, 408 (1927); *see also* Va. Code § 8.01-628 (providing that “[a]n application for a temporary injunction may be supported or opposed by an affidavit”).

ARGUMENT

As Plaintiffs have shown, it is exceedingly likely that the remaining Defendants will return to Charlottesville in the future and engage in the coordinated use of weaponry, causing further irreparable harm to Plaintiffs. All four factors weigh in favor of issuing a preliminary injunction to prevent Charlottesville from becoming a military theater once again.

A. Plaintiffs Are Highly Likely to Succeed on the Merits

First and foremost, Plaintiffs are likely to succeed on the merits should this case proceed to trial. Plaintiffs have brought claims to enjoin Defendants from further (1) violating the Virginia Constitution’s Strict Subordination Clause, Va. Const. art. I, § 13, which forbids engaging in military functions outside state authority; (2) violating Virginia’s anti-paramilitary statute, which aims to ensure that private groups will not use “firearm[s] . . . or technique[s] capable of causing

injury or death . . . in, or in furtherance of, a civil disorder,” Va. Code § 18.2-433.2; (3) violating Virginia’s false-assumption statute, which limits the exercise of law-enforcement functions to those with statutory authority to do so, *id.* § 18.2-174; and (4) creating a public nuisance, which the Virginia Supreme Court has defined as “a condition that is a danger to the public,” *Taylor v. City of Charlottesville*, 240 Va. 367, 372 (1990).

As Plaintiffs have discussed at some length in their demurrer opposition (incorporated by reference here), the Amended Complaint alleges sufficient facts that, if credited, would fully support these claims as a matter of law. This Memorandum supplies additional evidence—including photographs, videos, social-media postings, eyewitness reports, and Defendants’ own admissions—that further strengthens Plaintiffs’ legal arguments. This evidence is just a fraction of what Plaintiffs expect to produce at the hearing on this motion. As described in greater detail above, Defendants TWP and Vanguard America arrived in Charlottesville prepared to use organized force against persons who did not share their political views. They executed their plans with military precision, using shields, clubs, batons, and flagpoles to assault counter-protestors in a coordinated fashion. Defendant Heimbach was instrumental in preparing TWP’s members for battle and directing their violent conduct on August 12. Defendants Kessler and Kline transmitted detailed operational instructions to alt-right attendees, including how and where to form shield walls. Kline personally took command of alt-right shield formations at the rally. Kessler solicited the presence of unauthorized militia groups to provide additional security and encouraged attendees to bludgeon counter-protestors in “self-defense.” Finally, Redneck Revolt patrolled a public park with deadly semiautomatic weapons, with the avowed purpose of transforming the area into a “temporary autonomous zone” in which its members would substitute themselves for law enforcement.

These core facts are incontestable. Nor can Defendants seriously dispute that their actions severely disrupted many residents' sense of safety and the enjoyment of public spaces that their community has to offer. For the reasons expressed in this Memorandum and in Plaintiffs' demurrer opposition, Plaintiffs are likely to prevail on the merits of their legal claims.

B. Plaintiffs Would Suffer Irreparable Harm Absent a Preliminary Injunction

Should Defendants return to Charlottesville this August and engage in the coordinated use of force—or project the ability to do so—once again, Plaintiffs would suffer yet further irreparable harm. An irreparable harm is one that cannot be adequately compensated through damages. *See, e.g., Levisa Coal Co. v. Consolidation Coal Co.*, 276 Va. 44, 62 (2008); *see also Basicomputer Corp. v. Scott*, 973 F.2d 507, 511 (6th Cir. 1992) (“[A]n injury is not fully compensable by money damages if the nature of the plaintiff’s loss would make damages difficult to calculate.”). Although Plaintiffs did suffer some quantifiable damage from the first Unite the Right rally, their most serious injuries cannot readily be reduced to dollars and cents. Plaintiffs can expect to endure similar unquantifiable hardships if Defendants return to Charlottesville in a militarized fashion.⁶

For instance, reputational damages, such as “[t]he loss of customer goodwill[,] often amount[] to irreparable injury because the damages flowing from such losses are difficult to compute.” *Basicomputer Corp.*, 973 F.2d at 512; *see also BellSouth Telecommc’ns, Inc. v. MCI Metro Access Transmission Servs., LLC*, 425 F.3d 964, 970 (11th Cir. 2005) (“[T]he loss of customers and goodwill is an irreparable injury.”) (internal quotation marks omitted). Charlottesville businesses—and especially those in the downtown area—suffered just such an injury as a result of last year’s rally. *See Ex. 5-93 at 1* (noting a sharp decrease in local restaurant sales in September 2017). A local restaurant owner has stated that “[i]t was looking like a great

⁶ Plaintiffs’ demurrer opposition explains why the prospect of criminal prosecutions would be a meaningfully less effective remedy than injunctive relief. *See Pls.’ Opp’n to Defs.’ Demurrer 37–39.*

year until August. And then September was absolutely devastating.” *Id.* The head of Plaintiff Downtown Business Association of Charlottesville’s marketing committee has concluded that “when [people] keep seeing photographs and negative media, they are just a little leery about coming downtown.” *See* Ex. 5-94 at 1. And the City’s economic development director is “concern[ed] that investors and decision makers may think twice before committing to a project here . . . based on what they saw on the news over the summer.” *Id.* at 2. These observations, though regrettable, are unsurprising—to this day, a Google Image search for “Charlottesville” yields a photographic patchwork of terror and organized violence.

Plaintiffs, particularly the small businesses, have experienced these difficulties in the wake of last year’s rally. Referring to a drastic decline in revenue in September 2017, an owner of Plaintiff Maya Restaurant observed that “I have never seen such an interruption of sales on this level . . . for any given month in the last 21 years.” Ex. 5-93 at 1. Plaintiff Hays + Ewing Design Studio has received markedly fewer inquiries for projects within the city limits. Ewing Decl. Ex. 4, ¶ 3. Other business owners have noted that “[c]ustomers throughout the fall, and to a lesser extent this spring, have repeatedly said they are not coming downtown anymore, and there has been a decrease in customers from the counties neighboring the city.” Fenton Decl. Ex. 2, ¶ 7. The prospect of private armed forces occupying the City’s streets and parks yet again would depress tourism even further, and would doubtless deter many families, business owners, students, and job applicants from planting roots in Charlottesville. *See, e.g., id.* ¶ 8; Ewing Decl. Ex. 4, ¶¶ 5–7; Rodi Decl. Ex. 1, ¶ 8.

The loss of Charlottesville’s well-established reputation for safety has inflicted lasting emotional and psychological injuries on many community members. *See* Rodi Decl. Ex. 1, ¶ 6 (describing sleeplessness and acute anxiety); Fenton Decl. Ex. 2, ¶ 5 (describing fear at the sight of weapons); Clarens Decl. Ex. 3, ¶ 4 (describing inability to enjoy Emancipation Park during

public events). The burden of seeing their community—including public parks and popular shopping districts—turned into a battlefield has significantly diminished Plaintiffs’ ability to feel safe where they live and work. *See* Rodi Decl. Ex. 1, ¶ 6 (“For many weeks I was concerned about the safety of my family at our house (I sent my children to stay with their grandparents in the days immediately following the rally.)”); Clarens Decl. Ex. 3, ¶ 5 (“I have changed which playgrounds I take my children to, because I now worry about whether a playground is too exposed.”). Many residents, eager to avoid witnessing a re-militarization of their hometown, have rescheduled community events, *see* Clarens Decl. Ex. 3, ¶ 9, or made plans to leave the area in mid-August. Out-of-town visitors commonly ask Charlottesville residents to recall their experiences of August 12, or even to identify the location where Heather Heyer was killed, forcing them to relive these immensely painful moments. Members of Charlottesville’s oldest synagogue, who watched in horror as rally attendees carrying shields marched by performing the Sieg Heil, now feel compelled to hire armed security to stand guard over the congregation’s premises, including its preschool. *See* Fenton Decl. Ex. 2, ¶ 6. The University of Virginia football team has rented an entire hotel for the team’s use over the weekend of the one-year anniversary of the Unite the Right rally, for fear that alt-right organizations might otherwise rent rooms in the hotel and threaten the safety of the student athletes. One local business owner has characterized residents’ psychological adversity as “communal PTSD.” *See* Fenton Decl. Ex. 2, ¶ 5. Another has analogized the present situation to a concussion—if the community were forced to relive last year’s trauma before its psyche can fully heal, the resulting damage would be even more difficult to recover from. Rodi Decl. Ex. 1, ¶ 8.

Unfortunately, these incalculable harms threaten to recur without preliminary injunctive relief. As the Virginia Supreme Court has explained, “[w]hen there is reasonable cause to believe that [a] wrong . . . would cause irreparable injury” and is “apprehended with reasonable

probability, there is good cause for entry of a prohibitory injunction.” *WTAR Radio-TV Corp. v. City Council of City of Virginia Beach*, 216 Va. 892, 895 (1976). As detailed above, it is more than reasonably probable that each Defendant will return to Charlottesville for Defendant Kessler’s anniversary rally and engage in coordinated weapons-bearing once again, thereby causing further irreparable injury to Plaintiffs.

C. The Harm to Plaintiffs Outweighs the Minimal Burdens on Defendants

In addition to the harms described above, Plaintiffs would be subjected to additional burdens if their requested relief were denied. The City would need to expend considerable additional resources on law enforcement to guard against the Alt-Right Defendants’ organized violence. For Redneck Revolt, civil authorities would be required to calibrate the proper response to a volatile public demonstration with no foreknowledge of the group’s self-directed (and perhaps incompatible) security measures. Redneck Revolt had no contact with state or local police in advance of last year’s rally, Ex. 5-55 at 4—likely because it views law enforcement as a “system[] of social control” and a “state construct that enslaves and oppresses.” Ex. 5-90 at 2, 3. The mere movement of heavily armed groups to and from their vehicles may require a massive diversion of police resources, as well. At last year’s rally, for example, the appearance of one private militia group in and around the Water Street parking lot so alarmed residents that the Virginia State Police moved in to secure the area with a full line of riot shields. Ex. 5-41 at 2:18:12.

Plaintiffs who own businesses would likely lose money as a result of either closing temporarily, making expenditures to safeguard their storefronts, or hiring private security to protect employees and customers alike. Plaintiff homeowners’ associations would need to engage time and resources to limit traffic through their neighborhoods and communicate possible danger to their members, as well as to brace for potential property damage stemming from Defendants’ coordinated use of force. And both sets of Plaintiffs would feel a renewed sense of alienation and

disorientation, seeing their hometown invaded once more by private militaristic units. In the absence of an injunction, Plaintiffs would be left to fear that their community could devolve into organized violence at any time. *See* Clarens Decl. Ex. 3, ¶ 4 (worrying that Kessler would appear at a public event held at Emancipation Park).

In contrast, Defendants would face no burden. The Alt-Right Defendants have argued that, somehow, *their* constitutional rights would be chilled if they were no longer allowed to engage in organized displays of force. *See* Alt-Right Demurrer Br. 19–20. Likewise, Redneck Revolt insists that an order enjoining its coordinated use of weaponry would “chill Redneck Revolt members’ First Amendment right to assembly.” Redneck Revolt Demurrer Reply Br. 20. But the proposed injunctive relief is narrowly tailored to protect and promote the free speech of all parties: Defendants will still be able to assemble publicly and proclaim their views. They will remain free to engage in lawful self-defense or defense of others, as necessity may require. They simply will not be permitted to escalate the threat of violence and coerce their opponents by engaging in the coordinated use or projection of force.⁷ Speech should be met with speech, not with batons and firepower. *See In re White*, No. 2:07CV342, 2013 WL 5295652, at *63–64 (E.D. Va. Sept. 13, 2013) (“[I]n our democratic society, when presented with even caustic or abusive protected speech . . . the First Amendment demands that we confront those speakers with superior ideas . . .”). “The First Amendment does not protect violence.” *Claiborne Hardware Co.*, 458 U.S. at 916. It protects the free expression of ideas—and Plaintiffs’ requested injunction will do the same.

⁷ Virginia law provides a mechanism for private actors to augment the peacekeeping functions of law enforcement by serving as “special conservators of the peace.” *See* Va. Code § 19.2-13 *et seq.* Redneck Revolt members remain free to find a local business or property owner or custodian to submit a petition for Redneck Revolt members to serve as so-called “S-Cops,” assuming that they could satisfy all relevant state-law requirements. Rather than doing so in advance of August 12, 2017, however, Redneck Revolt took the law—and the policing of Justice Park—into its own hands.

D. A Preliminary Injunction Is in the Public Interest

At its core, Plaintiffs' request is simple: an order forbidding Defendants from violating certain state-law guarantees designed to promote public safety. As courts have recognized, "the public interest always lies with upholding the law." *See Pashby v. Delia*, 709 F.3d 307, 329 (4th Cir. 2013); *see also MFS Network Techs., Inc. v. Commonwealth*, No. HE-349-4, 1994 WL 1031152, at *4 (Va. Cir. Apr. 19, 1994) (concluding that the public interest lay in "know[ing] that Virginia's public procurement laws are being administered properly"). The public interest therefore counsels in favor of an injunction that will prevent Defendants from undermining the carefully crafted constitutional and statutory scheme governing the use of organized force in Virginia. *See* Pls.' Opp'n to Defs.' Demurrer 6–11. Eliminating the threat of violence posed by Defendants' coordinated, unsanctioned military activity will strongly benefit the public as well. *See Kolbe v. Hogan*, 849 F.3d 114, 139 (4th Cir. 2017) (en banc) (explaining that the government "has a compelling interest in protecting the public"); *Johnson v. Collins Entm't Co., Inc.*, 199 F. 3d 710, 720 (4th Cir. 1999) (noting "the state's paramount interest in the health, welfare, [and] safety . . . of its citizens").

In fact, these two imperatives are closely linked. Virginia has standardized the exercise of military and law-enforcement functions precisely because leaving those matters unregulated could prove catastrophic for public safety. The Defendants in this case perform such functions entirely outside the reach of public accountability. They pay no heed to the strict qualifications, training procedures, weaponry protocols, and codes of conduct that the General Assembly has prescribed for persons authorized to engage in the collective use of force. For instance, Redneck Revolt treats each of its branches as "autonomous," meaning that they are equipped and trained "according to . . . specific local context and needs." Ex. 5-55 at 11. The group's instruction manual invites each local branch to devise its own protocols for using deadly force in a coordinated fashion. *See* Ex.

5-18 at 40 (“What are your group’s rules of engagement? When and why is deadly force to be used?”). And Redneck Revolt admits that it “did not provide any training or instruction to members in preparation for August 12.” Ex. 5-55 at 4.

Finally, the injunction sought will serve the public interest by promoting opportunities for free and open expression without the chilling specter of armed groups bent on coercing others. Members of the public have a right to gather in Charlottesville’s parks, and to join whatever protest or counter-protest they so choose, “without fearing for their lives.” *State v. Spencer*, 876 P.2d 939, 942 (Wash. Ct. App. 1994). In any large-scale demonstration, moreover, law enforcement must strike a delicate balance between preserving community order and upholding constitutional rights. The need to ensure that law enforcement can overpower unauthorized paramilitary personnel, should hostilities ever arise, greatly complicates that challenging task by requiring formidable preparatory measures. For all of the reasons above, Plaintiffs’ proposed injunction would plainly serve the public interest.

CONCLUSION

Plaintiffs respectfully request that this Court enter the attached proposed order granting a preliminary injunction to preclude Defendants from returning to Charlottesville in coordinated, armed groups in violation of Virginia law.

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