

**The Honorable Kenneth T. “Ken” Cuccinelli, II**

**Prepared Statement for the United States Senate Committee on Homeland Security  
Hearing on Threats to Second Amendment Rights**

Chairman, Ranking Member, and Members of the Committee:

Thank you for the opportunity to testify today on the evolving landscape of Second Amendment rights in the United States. My testimony will focus in particular on recent developments in the Commonwealth of Virginia, which provide a timely and instructive case study of how rapidly state-level policy can reshape the practical exercise of a constitutional right.

In 2026, Virginia’s General Assembly passed a sweeping package of firearm-related legislation that now awaits final executive action. These measures, taken together, represent the most significant shift in firearm policy in Virginia’s modern history. They illustrate not only the breadth of regulatory approaches being pursued nationwide, but also the constitutional tensions that are likely to define Second Amendment jurisprudence in the coming years.

Most notably, Virginia lawmakers approved legislation that would prohibit the sale, manufacture, importation, and transfer of many commonly owned semi-automatic firearms classified as “assault firearms,” along with magazines capable of holding more than a specified number of rounds. While the legislation generally allows current owners to retain previously acquired firearms, it would effectively halt the future legal acquisition of entire categories of arms that are widely possessed for lawful purposes and it makes it impossible for current owners to transfer their firearms.

This type of prospective ban raises serious constitutional questions under both the federal and Virginia constitutions. In its individual rights jurisprudence, the U.S. Supreme Court has emphasized that the Second Amendment protects arms “in common use” for lawful purposes such as self-defense. Policies that prohibit future acquisition while allowing continued possession create a legal paradox: they implicitly acknowledge the widespread lawful ownership of these firearms, while simultaneously restricting future citizens from exercising the same right.

In addition to firearm-specific bans, Virginia has advanced legislation expanding restrictions on where firearms may be carried. Proposed measures would broaden the scope of public spaces where certain firearms are prohibited, moving beyond historically recognized “sensitive places” to potentially encompass large portions of ordinary public life. This raises important questions under the Supreme Court’s framework requiring firearm regulations to be consistent with the nation’s historical tradition of regulation.

Virginia lawmakers have also pursued policies imposing affirmative legal duties on firearm owners. Secure storage legislation would require individuals to store firearms in a manner that prevents access by others. While the goal of preventing unauthorized access is widely shared, such mandates must be carefully evaluated to ensure they do not unduly burden the core right of self-defense within the home—long recognized as a “central component” of the Second Amendment.

Further, the Commonwealth is expanding its use of “red flag” or extreme risk protection order laws. These laws allow for the temporary removal of firearms from individuals deemed to pose a risk. Although courts have generally upheld the concept, expansions to these laws—particularly those affecting evidentiary standards, duration, or who may initiate proceedings—raise due process concerns that deserve careful scrutiny. I fully expect to see the 2026 expansions of these laws weaponized to punish gun owners for political purposes unrelated to gun safety.

Finally, the Commonwealth has moved toward allowing civil liability actions against firearm manufacturers and distributors under certain circumstances. This approach seeks to navigate around existing federal protections and represents a significant shift in how responsibility for criminal misuse of firearms may be allocated. Such efforts raise complex questions of federal preemption and the proper balance between state authority and national uniformity, to say nothing of the naked attempt by Virginia Democrats and Governor Spanberger to simply destroy the firearm industry by any means they can concoct.

Taken together, these measures demonstrate a broader trend: the transformation of firearm policy from a framework focused primarily on prohibited persons and background checks into one that increasingly regulates categories of arms, locations of carry, methods of storage, and the broader ecosystem of lawful commerce – all in an effort to cut into the rights of law abiding gun owners and potential gun owners, and in many respects, to attempt to turn such citizens into law breakers of bureaucratic restrictions, in order to take their guns away or deter them from buying guns in the first place.

This evolution carries important implications. First, it increases the likelihood of constitutional litigation, particularly under the Supreme Court’s recent guidance that firearm regulations must align with historical tradition. Second, it creates growing divergence among states, leading to a patchwork of laws that may complicate compliance for ordinary citizens. Third, it raises fundamental questions about how far states may go in restricting access to arms that are commonly owned and widely used for lawful purposes.

Virginia’s experience underscores the importance of clear constitutional standards. Regardless of one’s policy preferences, there is a shared interest in ensuring that laws are predictable, consistent, and respectful of enumerated rights.

As this Committee considers the future of Second Amendment protections, it should take seriously the cumulative effect of state-level actions like those in Virginia. These developments are not isolated; they are part of a broader national conversation about the scope of a fundamental constitutional guarantee.

Thank you for your time and consideration. I look forward to answering your questions.