No. 18-2474

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

MARYLAND SHALL ISSUE, INC., *et al.*,

Plaintiffs-Appellants,

v.

LAWRENCE HOGAN,

Defendant-Appellee.

On Appeal from the United States District Court
for the District of Maryland
(James K. Bredar, District Judge)

BRIEF OF APPELLEE

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April 12, 2019

UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
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No. 18-2474 Caption: Maryland Shall Issue, et al. v. Governor of Maryland Lawrence Hogan

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(name of party/amicus)

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3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? ☐ YES ☑ NO
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4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(a)(2)(B))? ☐ YES ☑ NO
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6. Does this case arise out of a bankruptcy proceeding? ☐ YES ☑ NO
If yes, identify any trustee and the members of any creditors' committee:

Signature: /s/ Jennifer L. Katz Date: 12/21/2018

Counsel for: Lawrence Hogan

CERTIFICATE OF SERVICE

****

I certify that on 12/21/2018 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

/s/ Jennifer L. Katz (signature) 12/21/2018 (date)

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JURISDICTIONAL STATEMENT

Plaintiffs-appellants Maryland Shall Issue, Inc. ("MSI") and four individual members of MSI filed this suit against Maryland Governor Lawrence Hogan challenging the constitutionality of Maryland's statute banning the possession, transfer, or sale of "rapid fire trigger activators" including bump-stock devices like those used to devastating effect in the 2017 Las Vegas, Nevada mass shooting. Plaintiffs raised federal and state constitutional claims asserting, *inter alia*, that the ban was a compensable taking and an abrogation of their vested property rights, and that the statutory term "rapid fire trigger activator" was impermissibly vague. Governor Hogan moved to dismiss the complaint in its entirety. (J.A. 55.)

On November 16, 2018, the district court granted Governor Hogan's motion to dismiss. (J.A. 257.) The district court dismissed the federal and state takings and property rights claims under Federal Rule of Civil Procedure 12(b)(6). (*Id.*) The court dismissed Plaintiffs' vagueness claim for lack of standing under Federal Rule of Civil Procedure 12(b)(1). (*Id.*) Plaintiffs noted a timely appeal on December 6, 2018. (J.A. 259.) Except to the extent the district court found that Plaintiffs lacked standing, the court had subject matter jurisdiction under 28 U.S.C. §§ 1331, 1343(a)(3), and 1367(a). As explained in the Argument *infra*, since the filing of this appeal, an intervening change in federal law has rendered moot Plaintiffs' challenges

regarding bump-stock-type devices. This Court otherwise has jurisdiction under 28 U.S.C. § 1291 to review the district court's final order.

ISSUES PRESENTED FOR REVIEW

1. Are Plaintiffs' challenges to the State's ban on bump stocks moot, given that the federal government has determined that bump-stock-type devices are machine guns and that, consequently, the devices are banned under federal law?

2. Did the district court correctly determine that Maryland's ban on rapid fire trigger activators was not a compensable taking because the ban was a proper exercise of the State's police power to protect public safety, and the State did not physically appropriate the devices for its own use?

3. Did the district court correctly determine that the State's ban on rapid fire trigger activators was not a retroactive abrogation of Plaintiffs' vested property rights, because Maryland law has not recognized a constitutional right to possess dangerous personal property in perpetuity?

4. Did the district court correctly dismiss Plaintiffs' vagueness challenge on standing grounds where Plaintiffs did not allege any credible threat that the statute would be enforced in the way Plaintiffs alleged would render the statute void for vagueness?

5. Did the district court correctly dismiss claims brought by MSI in its organizational capacity for lack of standing, because MSI's only alleged harm was

that the challenged statute undermined its message and was an obstacle to its objectives, and, thus, MSI failed to allege a concrete injury?

STATEMENT OF THE CASE

Maryland's Ban on Rapid Fire Trigger Activators Enacted in the Wake of the Las Vegas Mass Shooting

In Las Vegas, Nevada on October 1, 2017, a gunman armed with several semi-automatic rifles modified "with attached bump-stock-type devices" enabling him "to fire several hundred rounds of ammunition in a short period of time," fired into a large crowd of concertgoers, thereby "killing 58 people and wounding approximately 500." *Bump-Stock-Type Devices*, 83 Fed. Reg. 66,514, 66,516 (Dec. 26, 2018), *available at* https://www.govinfo.gov/content/pkg/FR-2018-12-26/pdf/2018-27763.pdf.[1] The Las Vegas shooting "highlighted the destructive capacity of firearms equipped with bump-stock-type devices and the carnage they can inflict" and "made their potential to threaten public safety obvious." *Bump-Stock-Type Devices*, 83 Fed. Reg. 13,442, 13,447 (Mar. 29, 2018), *available at* https://www.gpo.gov/fdsys/pkg/FR-2018-03-29/pdf/2018-06292.pdf.

In response to the Las Vegas shooting, "the deadliest mass shooting in modern U.S. history," Maryland took action to ban bump stocks and similar devices that, as

[1] "The contents of the Federal Register shall be judicially noticed . . . ." 44 U.S.C. § 1507.

the sponsor of the legislation Senate Bill 707 explained, "modif[y a] firearm's rate of fire to mimic that of an automatic firearm." Testimony of Sen. Victor R. Ramirez in Support of SB-707, S. Judicial Proceedings Comm., 2018 Reg. Sess. (Md. 2018) (J.A. 82); *see also id.* ("[T]here is no reason someone should be making a semi-automatic weapon into an automatic weapon, with the ban of rapid fire trigger activators we can . . . sav[e] . . . innocent lives, and minimiz[e] the magnitude of tragic events such as the Las Vegas shooting." (J.A. 83)). The legislation was intended to ban devices that "allow semi-automatic firearms to mimic the firing speed of fully automatic firearms and can achieve rates of fire between 400 to 800 rounds per minute." S. Judicial Proceedings Comm. Floor Rep. on SB-707, at 4, 2018 Reg. Sess. (Md. 2018) (J.A. 88).

On April 24, 2018, Governor Hogan signed Senate Bill 707 into law as Chapter 252 of the 2018 Laws of Maryland (the "Act"). (J.A. 91-96.) The Act makes it unlawful for a person to "transport a rapid fire trigger activator into the State; or . . . manufacture, possess, sell, offer to sell, transfer, purchase, or receive a rapid fire trigger activator." Md. Code Ann., Crim. Law § 4-305.1 (LexisNexis 2018 Supp.). A person who violates the Act "is guilty of a misdemeanor and subject to imprisonment not exceeding 3 years or a fine not exceeding $5,000 or both." Crim. Law § 4-306.

The Act defines a "rapid fire trigger activator" in two ways. First, a "rapid fire trigger activator" is defined as "any device, including a removable manual or power-driven activating device, constructed so that, when installed in or attached to a firearm: (i) the rate at which the trigger is activated increases; or (ii) the rate of fire increases." Crim. Law § 4-301(m)(1). Second, a "rapid fire trigger activator" is defined to include "a bump stock, trigger crank, hellfire trigger, binary trigger system, burst trigger system, or a copy or a similar device, regardless of the producer or manufacturer." Crim. Law § 4-301(m)(2).

Each of the specifically-enumerated rapid fire trigger activators is defined by the Act:

- "Bump Stock" means "a device that, when installed in or attached to a firearm, increases the rate of fire of the firearm by using energy from the recoil of the firearm to generate a reciprocating action that facilitates repeated activation of the trigger." Crim. Law § 4-301(f).
- "Trigger Crank" means "a device that, when installed in or attached to a firearm, repeatedly activates the trigger of the firearm through the use of a crank, a lever, or any other part that is turned in a circular motion." Crim. Law § 4-301(n).
- "Hellfire Trigger" means "a device that, when installed in or attached to a firearm, disengages the trigger return spring when the trigger is pulled." Crim. Law § 4-301(k).
- "Binary Trigger System" means "a device that, when installed in or attached to a firearm, fires both when the trigger is pulled and on release of the trigger." Crim. Law § 4-301(e).
- "Burst Trigger System" means "a device that, when installed in or attached to a firearm, allows the firearm to discharge two or more shots with a single pull of the trigger by altering the trigger reset." Crim. Law § 4-301(g).

The General Assembly further provided that a "'[r]apid fire trigger activator' does not include a semiautomatic replacement trigger that improves the performance and functionality over the stock trigger." Crim. Law § 4-301(m)(3).

The Act contains an exception providing that the ban

> does not apply to the possession of a rapid fire trigger activator by a person who: (1) possessed the rapid fire trigger activator before October 1, 2018; (2) applied to the Bureau of Alcohol, Tobacco, Firearms and Explosives ["ATF"] before October 1, 2018, for authorization to possess a rapid fire trigger activator; and (3) is in compliance with all federal requirements for possession of a rapid fire trigger activator.

Crim. Law § 4-305.1(b). An amendment to the exception provision, which goes into effect October 1, 2019, further requires that the person have "received authorization to possess a rapid fire trigger activator from the [ATF] before October 1, 2019." Crim. Law § 4-305.1(b) (effective Oct. 1, 2019). On April 24, 2018, the ATF issued an advisory stating that "ATF is without legal authority to accept and process such an application" and, thus, "applications or requests will be returned to the applicant without action." https://www.atf.gov/news/pr/maryland-law-restricting-rapid-fire-trigger-activators.

The Federal Government's Long-Standing Regulation of Machine Guns and Recent Classification of Certain Rapid Fire Trigger Activators as Machine Guns

The federal government has long regulated possession of machine guns and, with exceptions not relevant here, has banned their transfer or possession. *See* 18 U.S.C. § 922(o); 26 U.S.C. § 5845(a)(6); (*see also generally* J.A. 109-12 (Brief of

Amicus Curiae Giffords Law Center to Prevent Gun Violence discussing history of federal government's regulation of machine guns)).

The National Firearms Act of 1934 ("NFA") "regulates the production, dealing in, possession, transfer, import, and export of" machine guns, among other covered firearms. *Guedes v. Bureau of Alcohol, Tobacco, Firearms and Explosives*, __ F.3d __, 2019 WL 1430505, at *1 (D.C. Cir. Apr. 1, 2019) (citing 26 U.S.C. §§ 5801–5861; § 5845(a)). The NFA defines a "machinegun" as "any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger." [2] 26 U.S.C. § 5845(b). The definition also covers "the frame or receiver of any such weapon" and "any part" or "combination of parts designed and intended, for use in converting a weapon into a machinegun" among other parts. *Id.*

The Gun Control Act of 1968 ("GCA"), as amended, 18 U.S.C. §§ 921–931, incorporates by reference the NFA's definition of machine gun. 18 U.S.C. § 921(a)(23). In 1986, Congress passed the Firearm Owners' Protection Act, Pub. L. 99-308, 100 Stat. 499, which made it "unlawful for any person to transfer or possess a machinegun," with an exception for lawful transfers or possession of machine guns that were lawfully possessed when the statute went into effect. 18

[2] Except where quoting statutes or other sources, the brief uses the more commonly used two-word spelling of machine gun.

U.S.C. § 922(o). The value of these pre-1986 machine guns "has steadily increased over time," and this increase in price "has spurred inventors and manufacturers to develop firearms, triggers, and other devices that permit shooters to use semiautomatic rifles to replicate automatic fire without converting these rifles into 'machineguns' under the NFA and GCA." 83 Fed. Reg. at 66,515-16.

After the 2017 Las Vegas shooting, ATF undertook formal rulemaking to interpret the term "machinegun." *See* 82 Fed. Reg. 60,929 (Dec. 26, 2017); 83 Fed. Reg. 13,442 (Mar. 29, 2018); 83 Fed. Reg. 66,514 (Dec. 26, 2018). In the final rule, promulgated after Plaintiffs noted this appeal, ATF defines the term "automatically," as used in the statutory definition of "machinegun," to mean "functioning as the result of a self-acting or self-regulating mechanism that allows the firing of multiple rounds through a single function of the trigger," and further defines the term "single function of the trigger" to mean "a single pull of the trigger and analogous motions." 27 C.F.R. § 478.11 (2019). The regulation further defines "machine gun" to include a "bump-stock-type device," which, according to the regulation, "allows a semi-automatic firearm to shoot more than one shot with a single pull of the trigger by harnessing the recoil energy of the semi-automatic firearm to which it is affixed so that the trigger resets and continues firing without additional physical manipulation

of the trigger by the shooter." *Id.*[3] As explained by ATF, bump-stock-type devices "are designed to be affixed to a semiautomatic long gun . . . in place of a standard, stationary rifle stock, for the express purpose of allowing 'rapid fire' operation of the semiautomatic firearm to which they are affixed." 83 Fed. Reg. at 66,516.

This regulation was adopted to '"rectify'" previous "classification errors" that resulted from insufficient legal analysis regarding some, but not all, bump-stock devices. *Id.* (quoting *Akins* v. *United States*, 312 F. App'x 197, 200 (11th Cir. 2009) (per curiam)). In 2006, ATF first classified as a machine gun a bump-stock device that "use[d] an internal spring to harness the force of the recoil so that the firearm shoots more than one shot with a single pull of the trigger[.]" 83 Fed. Reg. at 66,516; *see also Akin*, 312 F. App'x at 199. Between 2008 and 2017, however, ATF issued classification decisions concluding "that other bump-stock-type devices did not fire 'automatically,' and thus were not 'machineguns,' because the devices did not rely on internal springs or similar mechanical parts to channel recoil energy." 83 Fed. Reg. at 66,516. That conclusion "relied on the mistaken premise that the need for 'shooter input' (*i.e.*, maintenance of pressure) for firing with bump-stock type devices means that such devices do not enable 'automatic' firing." *Id.* at 66,531.

[3] The D.C. Circuit recently held "the statutory definition of 'machinegun' is ambiguous and [ATF's] interpretation is reasonable." *Guedes*, 2019 WL 1430505, at *21.

Those 2008 to 2017 decisions were reversed by the December 2018 final rule. *See id.* at 66,530-31.

In issuing the final rule, ATF responded to comments of those who contended that the proposed change in classification amounted to a taking under the Fifth Amendment to the United States Constitution because continued possession of the newly-classified machine guns would be unlawful under the GCA. Rejecting that contention, ATF explained that a "restriction on 'contraband or noxious goods' and dangerous articles by the government to protect public safety and welfare 'has not been regarded as a taking for public use for which compensation must be paid.'" 83 Fed. Reg. at 66,524 (quoting *Acadia Tech., Inc. v. United States*, 458 F.3d 1327, 1332 (Fed. Cir. 2006), and citing and discussing other cases).

Procedural History

On June 11, 2018, Plaintiffs filed a five-count, putative class action complaint in the United States District Court for the District of Maryland. Plaintiff MSI is an organization that is "dedicated to the preservation and advancement of gun owners' rights in Maryland." (J.A. 5, Compl. ¶ 8.) MSI contends that the prohibition on rapid fire trigger activators causes it direct harm "by undermining its message and acting as an obstacle to [its] objectives and purposes." (*Id.*) MSI also asserts that its membership includes "individuals who currently possess 'rapid fire trigger activators'" and that "MSI brings this action on behalf of itself and, separately, on

behalf of its members." (*Id.*) The individual plaintiffs, Paul Brockman, Robert Brunger, Caroline Brunger, and David Orlin, are all Maryland residents and MSI members, each of whom claims to have lawfully owned one or more of the banned devices prior to the Act's effective date. (J.A. 6, ¶¶ 9-11.) Specifically, the individual Plaintiffs allege that they have owned "bump stocks" or "binary trigger" systems or both. (J.A. 161, 169, 171.) In the complaint, Plaintiffs sought compensatory damages for the loss of their banned devices, as well as declaratory and permanent injunctive relief to bar enforcement of the Act. (J.A. 10, Compl. ¶ 4.)

In counts I and II of the complaint, Plaintiffs alleged that the Act's ban on possession of rapid fire trigger activators violates the Takings Clause of the Fifth Amendment to the United States Constitution and Article III, § 40 of the Maryland constitution. (J.A. 18-19.) In counts III and IV, Plaintiffs alleged that the Act violates the Due Process Clause of the Fourteenth Amendment because (1) they cannot take advantage of the exception in the law for individuals who receive authorization from ATF to maintain their rapid fire trigger activators, and (2) the definition of what constitutes a "rapid fire trigger activator" is unconstitutionally vague. (J.A. 19-23.) In count V, Plaintiffs allege that the statute violates Article 24 of the Maryland Constitution because it works retrospectively to abrogate their vested property rights. (J.A. 29-31.)

Governor Hogan filed a motion to dismiss the complaint in its entirety (J.A. 55), which the district court granted (J.A. 257). At the outset, the district court held that MSI lacked standing to bring any of the claims in its organizational capacity, because "the only direct harm MSI alleges to support standing in its non-representational, organizational capacity is that the Act 'undermin[es] [MSI's] message and act[s] as an obstacle to the organization's objectives and purposes.'" (J.A. 233-34 (quoting Compl. ¶ 8).) Relying on Supreme Court and Fourth Circuit takings cases, the district court dismissed Plaintiffs' takings challenges (counts I and II), upon concluding that Maryland's prohibition on dangerous rapid fire trigger activators to further the State's compelling interest in public safety was a proper exercise of the State's police power, and rejecting Plaintiffs' argument that the ban on possession constituted a *per se* taking. (J.A. 234-47.) Next, the court dismissed the plaintiffs' Article 24 claim (count V) on the ground that the Act does not retrospectively abrogate any vested rights of Plaintiffs, but rather is a proper exercise of the State's broad police powers to protect public safety. (J.A. 248-49.) The court dismissed the plaintiffs' vagueness claim (count IV) under Rule 12(b)(1) for lack of standing because there was no "credible threat" of enforcement of the statute in the way that would, according to Plaintiffs, render the statutory definition of a "rapid fire trigger activator" vague. (J.A. 250-52.) Finally, the district court dismissed Plaintiffs' due process claim (count III), because Plaintiffs failed to identify any

actual requirement of the law with which it is impossible for them to comply. (J.A. 252-56.)

In their appeal, Plaintiffs challenge the district court's dismissal of counts I, II, IV, and V of the complaint, and the district court's dismissal of MSI's claims brought in its organizational capacity. Plaintiffs' brief presents no argument regarding the dismissal of Count III.

SUMMARY OF ARGUMENT

The State of Maryland exercised its legislative police power to ban the possession, sale, and transfer of rapid fire trigger activators—devices that are constructed to work by modifying a semi-automatic firearm to mimic automatic fire. The legislature took this action after the Nation experienced its deadliest mass shooting in Las Vegas, where such devices were used to inflict maximum carnage. Since Maryland enacted its ban, ATF has determined that bump-stock-type devices, which are prohibited by Maryland's Act, are machine guns under federal law. ATF's newly-promulgated rule renders moot Plaintiffs' specific challenges to the Act's ban on bump-stock-type devices, because possession of such devices is now banned by federal law.

Further, the district court correctly concluded that the Act constitutes a proper exercise of the State's police power to ban dangerous devices having a "potential to threaten public safety," a threat only recently made "obvious" through tragic events.

83 Fed. Reg. at 13,447. The State was not required to compensate current owners of these dangerous devices, the district court properly held, because the ban on possession did not constitute a taking. Plaintiffs have argued only that the Act is a *per se* taking that requires compensation regardless of the public interest advanced, and have raised no argument under the more flexible standard that governs regulatory takings cases. The district court rejected Plaintiffs' *per se* taking argument, because the State has not physically appropriated the devices for its own use, and neither of the other narrow *per se* rules announced by the Supreme Court applies to this case. Rather, the district court properly applied a long line of cases holding that the State can ban contraband without compensating current owners.

The district court also properly rejected Plaintiffs' challenge under Article 24 of Maryland's Constitution, because the Act did not retroactively abrogate Plaintiffs' vested property rights. Unlike the real property and contract rights at issue in the cases on which Plaintiffs rely, the State did not extinguish Plaintiffs' property rights and transfer those rights to third parties, thereby disrupting their settled expectations in the continued enjoyment of those rights.

Further, the district court properly dismissed Plaintiffs' vagueness challenge for lack of standing. Plaintiffs contend that the generic definition of a "rapid fire trigger activator" could be read to extend to various firearms' accessories that do not in any way cause the trigger function of a firearm to result in "rapid fire." The

district court properly concluded that Plaintiffs lack standing to pursue that claim because they have not alleged any credible threat that the statute would be enforced in that way. This Court may also affirm the dismissal on the alternative ground, apparent from the record and raised below, that Plaintiffs failed to state a vagueness claim.

Finally, the district court properly concluded that MSI lacked organizational standing because it had not alleged any concrete, particularized injury to the organization.

ARGUMENT

I. THE STANDARD OF REVIEW IS DE NOVO.

This Court reviews de novo the district court's dismissal under Federal Rule of Civil Procedure 12(b)(6). *Walters v. McMahen*, 684 F.3d 435, 439 (4th Cir. 2012). To survive a Rule 12(b)(6) motion, "a complaint must state a 'plausible claim for relief,'" with factual allegations "sufficient 'to raise a right to relief above the speculative level'" and "advance the plaintiff's claim 'across the line from conceivable to plausible.'" *Id.* (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 570 (2007)). "[A]lthough a court must accept as true all factual allegations contained in a complaint, such deference is not accorded to legal conclusions stated therein," and "[t]he mere recital of elements of a cause of action, supported only by conclusory statements, is not sufficient. . . ." *Walters*, 684 F.3d at 439. "A pleading

that offers 'labels and conclusions' or . . . 'naked assertion[s]' devoid of 'further factual enhancement'" will not suffice. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*, 550 U.S. at 555, 557).

A dismissal under Rule 12(b)(1) also is reviewed de novo. *Demetres v. East West Const., Inc.*, 776 F.3d 271, 272 (4th Cir. 2015). Where, as here, dismissal is based on the face of the complaint, Plaintiffs are "afforded the same procedural protection" as under Rule 12(b)(6), "wherein 'the facts alleged in the complaint are taken as true,'" and the district court's determination is based on whether "the complaint alleges sufficient facts to invoke subject matter jurisdiction." *Beck v. McDonald*, 848 F.3d 262, 270 (4th Cir. 2017) (citation omitted).

This Court "may affirm on any ground supported by the record regardless of the ground on which the district court relied." *Drager v. PLIVA USA, Inc.*, 741 F.3d 470, 474 (4th Cir. 2014).

II. THE PLAINTIFFS' CHALLENGES TO THE BAN ON POSSESSION OF BUMP STOCKS ARE MOOT, BECAUSE THE DEVICES HAVE BEEN CLASSIFIED AS MACHINE GUNS PROHIBITED UNDER FEDERAL LAW.

"[I]ntervening events that change the law can moot challenges to the validity of a statute or regulation," *Gulf Oil Corp. v. Brock*, 778 F.2d 834, 840 (D.C. Cir. 1985), and one such event is promulgation of a new regulation, *see Phillips v. McLaughlin*, 854 F.2d 673 (4th Cir. 1988) (challenge rendered moot by regulation promulgated after appeal was filed). As described above, ATF recently promulgated

a regulation interpreting the definition of machine gun under federal law to encompass bump-stock-type devices. By virtue of this new rule, "bump stocks," as defined and banned by Maryland's Act, also constitute machine guns prohibited by federal law. *Compare* 27 C.F.R. § 478.11 (defining a "bump-stock-type device" as "harnessing the recoil energy of the semi-automatic firearm to which it is affixed so that the trigger resets and continues firing without additional physical manipulation of the trigger by the shooter"), *with* Crim. Law § 4-301(f) (defining a "Bump Stock" as using energy from the recoil of the firearm to generate a reciprocating action that facilitates repeated activation of the trigger). Because Congress has authority to prohibit the possession of machine guns under its Commerce Clause power, *see Montana Shooting Sports Ass'n v. Holder*, 727 F.3d 975, 981-82 (9th Cir. 2013); *United States v. Knutson*, 113 F.3d 27, 30 (5th Cir. 1997), the ATF's newly-promulgated regulation implementing federal statutes moots Plaintiffs' challenges to the Act's ban on the possession of "bump stocks" and similarly-constructed devices that constitute machine guns under federal law.[4]

[4] In response to comments received during the comment period, the ATF stated its disagreement that "binary triggers . . . will be reclassified as machineguns" under the new rule, because "the shooter must release the trigger" before a second shot is fired, which is "a second function of the trigger." 83 Fed. Reg. at 66,534.

III. MARYLAND'S BAN ON DANGEROUS RAPID FIRE TRIGGER ACTIVATORS IS A PROPER EXERCISE OF THE STATE'S POLICE POWER AND DOES NOT CONSTITUTE A TAKING.

After the Las Vegas mass shooting, Maryland exercised its police power to ban possession of rapid fire trigger activators that enable a firearm to mimic automatic fire, including the bump-stock devices used in the attack. The Las Vegas shooting "highlighted the destructive capacity of firearms equipped with bump-stock-type devices and the carnage they can inflict" and "made their potential to threaten public safety obvious." 83 Fed. Reg. at 13,447. By banning such dangerous devices, the State was advancing its "compelling" interest in "the protection of its citizenry and the public safety." *Kolbe v. Hogan*, 849 F.3d 114, 139 (4th Cir.) (en banc), *cert. denied*, 138 S. Ct. 469 (2017).

Notably, Plaintiffs do not allege that the ban on rapid fire trigger activators is an invalid exercise of the State's police power. They do not argue that they have a right to possess these devices under the Second Amendment, or even that the devices are useful for in-home self-defense. Nor do Plaintiffs deny that the banned devices were constructed to work by modifying a firearm to achieve rapid fire that mimics the rate of automatic fire.[5] Instead, Plaintiffs contend that the State was required to compensate them when it exercised its police power to ban possession of rapid fire

[5] Nor would any such allegation be credible given the marketing of such devices to allow for even faster firing than a fully automatic weapon. *See, e.g.*, https://www.youtube.com/watch?v=kgxTiMp0P5I.

trigger activators, because the Plaintiffs lawfully owned these devices before the State's ban took effect. As the district court described it, under Plaintiffs' theory, "a state's power to declare dangerous property to be contraband will always be constrained by an obligation to pay just compensation if possession is banned . . . no matter how dangerous [the item of personal property], and no matter how compelling the state's interest in doing so . . . ." (J.A. 238.) Plaintiffs are wrong. Their argument relies on the unprecedented contention that a state's decision to ban the possession of dangerous devices is a "*per se*" taking, regardless of the public safety justifications for enacting the ban. The district court thoroughly debunked that notion in its well-reasoned opinion.

A. Legal Principles Governing Takings Claims

The United States Constitution and the Maryland Constitution both provide that private property shall not "be taken for public use, without just compensation." U.S. Const. amend. V; Md. Const. art. III, § 40.[6] The Supreme Court's takings cases distinguish between two types of takings: (1) physical appropriation of private property and (2) regulatory burdens on private property. *See Murr v. Wisconsin*, 137

[6] Maryland courts consider the Supreme Court's takings decisions to be "practically direct authorities" for takings claims brought under the Maryland Constitution, Article III, § 40. *Litz v. Maryland Dep't of Env't.*, 446 Md. 254, 266 (2016); *see also Department of Trans., Motor Vehicle Admin. and Dep't of Health and Mental Hygiene v. Armacost*, 299 Md. 392, 420 (1984).

S. Ct. 1933, 1942-43 (2017) (discussing the distinct types of takings cases). In the case of a physical appropriation of land or personal property for public use, the Supreme Court has found the plain language of the Takings Clause to require compensation. *See id.*; *see also Horne v. Department of Agric.*, 135 S. Ct. 2419, 2427-28 (2015) (physical appropriation of personal property).

Regulatory takings cases, however, "ha[ve] been characterized by 'ad hoc, factual inquiries, designed to allow careful examination and weighing of all the relevant circumstances.'" *Murr*, 137 S. Ct. at 1942 (quoting *Tahoe–Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency*, 535 U.S. 302, 322 (2002)). The Court has articulated "a complex of factors" to guide courts, including "(1) the economic impact of the regulation on the claimant; (2) the extent to which the regulation has interfered with distinct investment-backed expectations; and (3) the character of the governmental action." *Murr*, 137 S. Ct. at 1943 (citing *Palazzolo v. Rhode Island*, 533 U.S. 606, 617 (2001)). "A central dynamic of the Court's regulatory takings jurisprudence . . . is its flexibility." *Murr*, 137 S. Ct. at 1943; *see also Horne*, 135 S. Ct. at 2425 (describing regulatory takings analysis as a "more flexible and forgiving standard").

It is well established in the Court's cases "that the nature of the State's action is critical in takings analysis." *Keystone Bituminous Coal Ass'n v. DeBenedictis*, 480 U.S. 470, 488-89 (1987) (relying on *Mugler v. Kansas*, 123 U.S. 623 (1887)).

"Courts have consistently held that a State need not provide compensation when it diminishes or destroys the value of property by stopping illegal activity or abating a public nuisance." *Id.* at 492 n.22 (collecting cases). In regulatory takings cases, the Court has identified only "two discrete categories of regulatory action as compensable without case-specific inquiry into the public interest advanced in support of the restraint." *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1015 (1992). The first concerns "regulations that compel the property owner to suffer a physical 'invasion' of his property," *id.* (citing *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 427 (1982)), and the second concerns cases "where regulation denies all economically beneficial use of land," *id.* Even in this latter category, however, the State may act under its "power to abate nuisances that affect the public generally," without paying compensation. *Id.* at 1029.

The Supreme Court has not identified any such categorical rules that apply to regulations on personal property. Indeed, unlike physical takings cases, regulatory takings cases distinguish between real and personal property when determining whether compensation is owed. With regard to real property, although "a property owner necessarily expects the uses of his property to be restricted, from time to time, by various measures newly enacted by the State in legitimate exercise of its police powers," this "'implied limitation'" does not permit the state to "subsequently eliminate all economically valuable use" of land. *Lucas*, 505 U.S. at 1027 (quoting

Pennsylvania Coal Co. v. Mahon, 260 U.S. 393, 413 (1922)). With regard to "personal property," however, the Court has explained that "by reason of the State's traditionally high degree of control over commercial dealings, [the property owner] ought to be aware of the possibility that new regulation might even render his property economically worthless . . . ." *Lucas*, 505 U.S. at 1027-28; *see also Horne*, 135 S. Ct. at 2427 (reiterating the "different treatment of real and personal property in a regulatory case" as articulated in *Lucas*).

Plaintiffs' takings challenge is limited to alleging that the Act constitutes a *per se* taking of their rapid fire trigger activators and, thus, that compensation must be paid regardless of the State's justifications for enacting the Act. Appellants' Br. 30-42. They have made no argument under the "more flexible and forgiving" standard that applies in regulatory takings cases. As discussed more fully below, the Supreme Court has never held that a ban on the possession of dangerous devices constitutes a *per se* taking under the Takings Clause. Rather, relying on over a century of Takings Clause cases rejecting challenges to regulations restricting contraband, the district court properly concluded that the Act was a proper exercise of the State's police power to ban contraband and did not constitute a taking under any of the *per se* theories advanced by Plaintiffs.

B. The Act Is a Proper Exercise of the State's Police Power to Ban Possession of Dangerous Devices.

The district court correctly concluded that "[t]he Act regulates rapid fire trigger activators as contraband, a legitimate exercise of the state's traditional police power to regulate for public safety." (J.A. 234.) *See also Roberts v. Bondi*, No. 18-cv-1062-T-33TGW, 2018 WL 3997979, at *3-4 (M.D. Fla. Aug. 21, 2018) (dismissing takings challenge to Florida's ban on bump stocks because the ban "'prohibits the possession of contraband'" and, thus, is a proper "exercise of the legislative police power" (citation omitted)); *Fesjian v. Jefferson*, 399 A.2d 861, 865-66 (D.C. 1979) (holding that ordinance that banned registration (and thus possession) of machine guns in the District of Columbia was "a proper exercise of police power to prevent a perceived public harm, which does not require compensation").

No decision of the Supreme Court holds, or even suggests, that the State's exercise of its police power to ban possession of inherently dangerous devices constitutes a taking. As the district court explained, "the Supreme Court has routinely upheld property regulations, even those that 'destroy[]' a recognized property interest, where a state 'reasonably concluded that the health, safety, morals, or general welfare' would be advanced." (J.A. 235 (quoting *Penn Cent. Transp. Co. v. New York City*, 438 U.S. 104, 125 (1978), and citing *Mugler*, 123 U.S. at 668).)

Indeed, over a century ago, in *Mugler*, 123 U.S. 623, the Supreme Court rejected a takings claim where the challengers had purchased or erected their breweries before enactment of a state law prohibiting the manufacture and sale of alcoholic beverages. The Court ruled that a "prohibition simply on the use of property for purposes that are declared, by valid legislation, to be injurious to the health, morals, or safety of the community, cannot, in any sense, be deemed a taking or an appropriation of property for the public benefit." *Id.* at 668-69; *see also Samuels v. McCurdy*, 267 U.S. 188, 198 (1925) (applying *Mugler* and holding no compensation due for liquor rendered valueless where prohibition fell "within the police power of the states"); *Miller v. Schoene*, 276 U.S. 272, 279-80 (1928) (upholding constitutionality of order to destroy diseased cedar trees to prevent infection of nearby orchards without compensating owners). The Court in *Mugler* reasoned that "the supervision of the public health . . . is a governmental power, continuing in its nature, and to be dealt with as the special exigencies of the moment may require; . . . for this purpose, the largest legislative discretion is allowed, and the discretion cannot be parted with any more than the power itself." *Mugler*, 123 U.S. at 669.

Relying on *Mugler* and its progeny, this Court has recognized the ability of states to protect the public by banning possession and sale of personal property in heavily regulated fields without effecting a compensable taking. *Holliday*

Amusement Co. of Charleston, Inc. v. South Carolina, 493 F.3d 404, 410-11 & n.2 (4th Cir. 2007). In *Holliday*, this Court held that South Carolina's ban on the possession or sale of certain gambling machines, which had previously been legal to possess and sell, was not a taking, even though as a result of the newly-enacted law, the machines "lost all market value" and the owner's "business became worthless." *Id.* at 406. This Court analogized the state's exercise of its police power to regulate gambling to "another classic exercise of state police power: regulation of the sale of alcoholic beverages" and noted that "[t]he Supreme Court consistently rejected takings challenges to Prohibition-era regulations of previously acquired stock." *Id.* at 410.

In *Holliday*, as in this case, the state had enacted a law to promote the public health in a "heavily regulated" field, and, thus, the owners of the newly-banned gambling machines had no "legitimate expectation" of their "continued legality." Relying on *Lucas*, this Court reiterated that "the owner of any form of personal property must anticipate the possibility that new regulation might significantly affect the value of his business," particularly "in the case of a heavily regulated and highly contentious activity . . . ." *Id.* at 411 (citing *Lucas*, 505 U.S. at 1027-28). [7]

[7] The plaintiffs incorrectly claim that *Holliday* was silently overruled by the Supreme Court's decision in *Horne*, a case involving regulation of nutritious raisins rather than harmful contraband, which held that the "physical appropriation" of personal property for government use is a *per se* taking, 135 S. Ct. at 2427, 2429. First, this Court "discourage[s] reliance on such a premise"

As discussed above, the regulation of firearms, and in particular machine guns, is long-standing, commonplace, and like the gambling regulations in *Holliday*, subject to change. Thus, although now-banned rapid fire trigger activators were lawful to possess when Plaintiffs acquired them, "the State did not thereby give any assurance, or come under an obligation, that its legislation upon that subject would remain unchanged." *Holliday*, 493 F.3d at 411 (quoting *Mugler*, 123 U.S. at 669). The banned devices function to modify a firearm to mimic a machine gun, "the ownership of which would have the same quasi-suspect character [the Supreme Court has] attributed to owning hand grenades," *Staples v. United States*, 511 U.S. 600, 611-12 (1994).

Nor is Maryland's decision to ban previously lawful devices a unique development in this field. In *Akins v. United States*, 82 Fed. Cl. 619, 624 (Fed. Cl. 2008), the Federal Court of Claims held that the U.S. government had not effected

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because "arguing that a precedent has been overruled through a court's silence is a disfavored enterprise within this circuit." *In re Morrissey*, 168 F.3d 134, 139-40 (4th Cir. 1999). Second, as *Holliday* explained in dicta, the distinction between physical and regulatory takings becomes "meaningless" where the "claim depends on the false premise that the state's legitimate regulation of gambling constitutes a taking." 493 F.3d at 410. Here, too, Maryland has exercised its police power to regulate contraband in a heavily-regulated field. Moreover, unlike *Horne*, the challenges in *Holliday* and this case involve no physical appropriation. Thus, even if *Horne* could be construed as silently overruling over a century of Takings Clause jurisprudence regarding the state's ability to regulate contraband, *Horne*'s holding is limited to instances of physical appropriation, which is not this case.

a compensable taking when it reversed a prior decision that a bump-stock-type device was not a machine gun under federal law. The court ruled in that case that the manufacturer of the device "that increased the rate at which semi-automatic weapons are discharged" had no property interest that derived from his expectation that he could continue to manufacture the item free from government regulation. *Id.* In their declarations, Plaintiffs have all acknowledged that they purchased their rapid fire trigger activators in the years *after* the ATF changed its interpretation of whether the device at issue in *Akins* constituted a machine gun under federal law. (*See* J.A. 161, 169, 171.) Thus, they cannot plausibly claim that they had legitimate expectations in the continued legality of the similar devices they purchased, which fall within the same heavily-regulated area and for which the manufacturers had to seek assurances from the ATF that the devices were not literal machine guns. (*See* J.A. 163-64.)

The district court also properly rejected Plaintiffs' reliance on cases involving firearms that differ materially from this case. In *Duncan v. Becerra*, the Southern District of California preliminarily enjoined California's ban on possession of magazines holding more than 10 rounds of ammunition, on both Second Amendment and Takings Clause grounds. *Duncan v. Becerra*, 265 F. Supp. 3d 1106 (S.D. Cal. 2017), *aff'd*, 742 F. App'x 218, 222 (9th Cir. 2018). The two rationales were not, as Plaintiffs contend, wholly independent of each other. Rather, in its takings analysis,

the district court rejected the state's "nuisance" justification for enacting the ban, noting the Supreme Court's observation that "[g]uns in general are not 'deleterious devices or products or obnoxious waste materials.'" *Id.* at 1137 (quoting *Staples*, 511 U.S. at 610 (alteration in *Duncan*)). This case does not involve firearms that any court has deemed protected by the Second Amendment; rather, the challenged Act regulates firearms accessories that are constructed to mimic machine guns.

Plaintiffs also misplace reliance on *Serio v. Baltimore County*, 384 Md. 373 (2004), which held that a felon retained a property interest in his non-forfeited firearms even though he was no longer able to possess them lawfully. The Court of Appeals of Maryland concluded that the government's retention of the firearms fell within the general rule that "[w]hen property has been physically appropriated by a governmental entity from a property owner, the government must 'justly' compensate the property owner," which could be realized by a court-ordered sale of the firearms. *Serio*, 384 Md. at 399. Notably, the State has not physically appropriated Plaintiffs' rapid fire trigger activators. Moreover, unlike the inherently dangerous devices banned by the Act, the firearms at issue in *Serio* were not intrinsically illegal in character and were only unlawful to possess due to the plaintiff's status as a convicted felon. *See id.* at 396.

As the Supreme Court explained in *Mugler*, "the supervision of the public health . . . is a governmental power, 'continuing in its nature,' and 'to be dealt with

as the special exigencies of the moment may require.'" 123 U.S. at 669 (citation omitted). Here, in the wake of the nation's deadliest mass shooting, Maryland exercised its police power to ban devices, like those used in the Las Vegas shooting, that enable a shooter to fire hundreds of rounds in mere minutes and thereby pose significant public safety risks. Given the banned devices' undisputed function of modifying firearms to allow them to mimic machine guns, the State's exercise of its police power to protect the public from these inherently dangerous devices does not constitute a taking.

C. The District Court Properly Rejected Plaintiffs' Claims That the Ban on Possession of Rapid-Fire Trigger Activators Was a *Per Se* Taking.

Plaintiffs erroneously contend that the State's interest in banning possession of rapid fire trigger activators is irrelevant because the ban on possession constitutes a *per se* taking. Misconstruing Supreme Court cases that did not involve regulation of inherently dangerous devices, Plaintiffs argue that a ban on possession of personal property is tantamount to a physical invasion or appropriation of their property. By making that unsupported inferential leap, Plaintiffs seek to distract the Court's attention from the banned devices' "obvious" potential for destruction and the State's compelling reasons for enacting the ban. 83 Fed. Reg. at 13,447. The district court properly rejected those arguments, and this Court should affirm the district court's sound judgment.

First, the district court found that the ban on possession did not constitute a "physical taking" by which the government "physically takes possession of" real or personal property "for its own use." *Horne*, 135 S. Ct. at 2425 (quoting *Arkansas Game & Fish Comm'n v. United States*, 568 U.S. 23, 31 (2012), and *Tahoe-Sierra*, 535 U.S. at 324). Plaintiffs' argument finds no support in *Horne*, which repeatedly emphasized that it addressed, not regulation of use or possession, but a "*physical taking*" of personal property, *id.*, 135 S. Ct. at 2428, specifically, the "physical appropriation" of raisins by the federal government for sale, allocation, or disposal to stabilize the raisin market, *see id.* at 2427. *Horne* held only that *per se* rules requiring compensation for physical takings apply equally to real and personal property. *See id.* at 2427-28. Because the State has not physically appropriated rapid fire trigger activators for its own use, the *per se* rule articulated in *Horne* does not apply.

Although Plaintiffs contend that a ban on possession amounts to a physical appropriation, the Supreme Court made clear in *Horne* that its application of a *per se* rule was based on the government's physical appropriation of the raisins in that case. *See, e.g.*, 135 S. Ct. at 2427 (property owners do not expect their personal property to be "actually occupied or taken away"); *id.* at 2428 (describing the "reserve requirement imposed by the Raisin Committee" as a "clear physical taking. Actual raisins are transferred from the growers to the Government. Title to the raisins passes to the Raisin Committee."). Further, *Horne* reiterated the "'long-standing distinction'

between government acquisitions of property and regulations." *Id.* at 2427 (quoting *Tahoe-Sierra*, 535 U.S. at 323); *see also id.* at 2428 (quoting *Lucas*, 535 U.S. at 323, for the proposition that it is "inappropriate to treat cases involving physical takings as controlling precedents for the evaluation of a claim that there has been a 'regulatory taking,' and vice versa"). Indeed, addressing the dissent's response that "the government may prohibit the sale of raisins without effecting a *per se* taking," the majority in *Horne* again emphasized "the settled difference in [the Court's] takings jurisprudence between appropriation and regulation." *Horne*, 135 S. Ct. at 2428. The Court explained that "[a] physical taking of raisins and a regulatory limit on production may have the same economic impact on a grower. The Constitution, however, is concerned with means as well as ends." *Id.* The Court's careful and oft-repeated distinction between physical and regulatory takings makes clear that *Horne*'s holding is limited to "direct appropriations" or "government acquisitions of property." *Id.* at 2427. Here, because it is undisputed that the State has not physically appropriated the banned rapid fire trigger activators for its own use, the ban on possession is not a *per se* taking under the rule announced in *Horne*.[8]

[8] Even *Duncan v. Becerra*, on which the plaintiffs heavily rely, analyzed provisions of a ban on possession of large-capacity magazines that did not require surrender to the government under a regulatory takings analysis. *See* 742 F. App'x at 222 n.3. As the panel's dissenting judge persuasively explained, because the current owners of the magazines could transport them out of state and retain ownership of them, the state had not effected a physical appropriation of the

Nor does *Horne*'s discussion of *Andrus v. Allard*, 444 U.S. 51 (1979), a regulatory takings case, support Plaintiffs' argument. In *Allard*, the Court held that a commercial ban on the sale of protected bird artifacts, which "prevent[ed] the most profitable use of the [challengers'] property," did not amount to a regulatory taking because the owners retained the rights to possess and transport the artifacts. *Id.* at 66. In *Horne*, the majority addressed the dissent's reliance on *Allard* merely to distinguish the type of taking alleged: a physical taking in *Horne* as opposed to a regulatory taking in *Allard*. In so doing, the majority noted that in *Allard* the owners of the regulated artifacts retained possession of them; while in *Horne*, the government physically appropriated the raisins for its own use. *See Horne*, 135 S. Ct. at 2429. But, as discussed above, the Court in *Horne* did not suggest that a ban on possession is synonymous with physical appropriation for government use. *See*, *e.g.*, *id.* at 2429 ("In finding no taking, the [*Allard*] Court emphasized that the Government did not 'compel the surrender of the artifacts, and there [was] no *physical* invasion or restraint upon them.' Here of course the raisin program requires *physical* surrender of the raisins and transfer of title, and the growers lose any right to control their disposition." (emphasis added; internal citations omitted)). Nor did

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magazines, and the record lacked any evidence that the overall economic impact of the ban constituted a regulatory taking. *Id.* at 225-26 (Wallace, J., dissenting).

Allard, a regulatory takings case, hold or even suggest that a ban on possession constitutes a *per se* physical taking.

Moreover, the plaintiffs ignore the distinct public interests at stake in *Allard* and this case. In *Allard*, the government was not compelled "to regulate by *purchase*," 444 U.S. at 65 (emphasis in original), where it sought to protect endangered species by banning sale and transfer of protected bird artifacts, thereby severely curtailing the challengers' property rights in such artifacts, *id.* at 53-54. Here, too, Maryland was not required "to regulate by *purchase*" in order to exercise its police power to ban possession of inherently dangerous devices in a highly regulated field, the use of which pose grave risks to public safety. As described above, the Supreme Court and this Court have held that regulatory bans that deprive property of all economic value, including a ban on possession, did not constitute takings when enacted to protect the public good from dangerous substances or devices.

Plaintiffs' reliance on *Loretto* is similarly unwarranted. *Loretto* involved a challenge to a New York statute requiring a landlord to permit a cable television company to install its cable facilities on his property. 458 U.S. at 421. The Supreme Court's "narrow" holding in that case "affirm[ed] the traditional rule that a permanent physical occupation of property" authorized by the government "is a taking." *Id.* at 441. The Court reasoned that the physical invasion deprived the

property owner of the rights to possess, use, and dispose of the property, and the power to exclude others from the property. *Id.* at 435-36. *Horne* found *Loretto*'s reasoning regarding "a physical *appropriation*" of real property to be "equally applicable to a physical appropriation of personal property." 135 S. Ct. at 2427 (emphasis in *Horne*). Plaintiffs contend that because both *Loretto* and *Horne* discuss the loss of the right to possession in "physical appropriation" cases, the Act's ban on possession must be tantamount to a physical appropriation of personal property. The Supreme Court has never so held, and the holdings in *Loretto* and *Horne* emphasized the physical invasion or appropriation of the property at issue. As the district court pointed out, the Act "does not purport to allocate permanent possession of Plaintiffs' rapid fire trigger activators to private third parties" or the government. (J.A. 244-45 n.6.) Indeed, except to the extent rapid fire trigger activators qualify as machine guns and, thus, are banned by federal law, Plaintiffs are free to possess or transfer the devices out of state.

Finally, as discussed above, the per se rule applied in *Lucas* to regulations that deprive land of its economic value does not apply here under *Lucas*'s plain terms, which limit the holding to restrictions on land use. *See Lucas*, 505 U.S. at 1119, 1028 (describing its holding as pertaining to "owner[s] of real property" and "the case of land"); *see also Horne*, 135 S. Ct. at 2427 (construing *Lucas* to mean that "implied limitations" under the police power are "not reasonable in the case of

land"); *Holliday Amusements Co.*, 493 F.3d at 411 n.2 ("*Lucas* by its own terms distinguishes personal property.").

Because the Act does not constitute a *per se* taking under any of the Supreme Court's precedents, this Court should affirm the dismissal of Plaintiffs' takings claims under both federal and state law.

IV. MARYLAND'S BAN ON DANGEROUS RAPID FIRE TRIGGER ACTIVATORS IS NOT A RETROACTIVE ABROGATION OF VESTED RIGHTS.

The district court properly rejected Plaintiffs' claim under Article 24 of the Maryland Declaration of Rights that the Act abrogated their vested property interests in the continued possession of their rapid fire trigger activators. Article 24 protects property interests against laws that retroactively "impair rights a party possessed when he acted, increase a party's liability for past conduct, or impose new duties with respect to transactions already completed." *Muskin v. State Dep't of Assessments & Taxation*, 422 Md. 544, 557-58 (2011) (citation omitted). The district court noted, however, the lack of any "authority for the proposition that Maryland law recognizes, under Article 24, 'vested' rights to possess tangible personal property like rapid fire trigger activators in perpetuity." (J.A. 248.) Indeed, "it is a fundamental principle" of Maryland law that "'persons and property are subjected to all kinds of restraints and burdens in order to secure the general comfort, health, and prosperity of the State.'" *Syska v. Montgomery County Bd. of Educ.*, 45

Md. App. 626, 633 (1980) (quoting *Jacobson v. Massachusetts*, 197 U.S. 11, 25 (1905)).

As discussed above, machine guns have long been heavily regulated and their possession is generally banned. Thus, Plaintiffs had no "reasonable reliance" or "settled expectations" in continuing to possess their devices, *Muskin*, 422 Md. at 558, or "a firm expectation for the future enjoyment" of the benefits conferred from owning the devices, *id.* at 560, given that they were constructed to mimic machine guns. *Cf. Raynor v. Maryland Dep't of Health and Mental Hygiene*, 110 Md. App. 165 (1996) (holding the State's destruction of a pet ferret for public safety purposes was not a compensable taking where a public nuisance was abated, and there was no settled expectation to keep a wild animal free of government regulation that may result in its destruction). Moreover, *Muskin* and *Dua v. Comcast Cable of Maryland, Inc.*, 370 Md. 604 (2002), involved vested rights in real property and contract, property rights that Maryland precedent deems the "basis of economic stability," *Muskin*, 422 Md. at 565, and "almost . . . sacrosanct in our history," *id.* at 562. Machine guns and related devices have no such role in Maryland's history or economy.

Still, though the Act forms part of an extensive body of laws regulating firearms, the Act itself does not effect a physical appropriation of Plaintiffs' rapid fire trigger activators. *Cf. Muskin*, 422 Md. at 558; *Serio*, 384 Md. at 399 (firearm

had been "physically appropriated by a governmental entity" without compensation). At least as to those rapid fire trigger activators that do not constitute machine guns prohibited by federal law, Maryland owners can store and use the devices out of state, sell or transfer the devices in another state, or dispose of the devices in some other way. *Cf. Serio*, 384 Md. at 399 (taking could be remedied "through a court ordered sale of the [non-forfeited] firearms" physically appropriated from felon).

Finally, no case relied on by Plaintiffs concerned the State's exercise of its police power to curtail the use of personal property that the General Assembly determined was dangerous to the health and welfare of the public. Nowhere in *Muskin* or *Dua* or *Serio* did the Court of Appeals indicate any intent to overrule its long tradition of deferring to the State's broad police power "to determine not only what is injurious to the health, morals or welfare of the people, but also what measures are necessary or appropriate for the protection of those interests." *Davis v. State*, 183 Md. 385, 297 (1944). As the Court of Appeals has made clear, "[t]he exercise of the police power may inconvenience individual citizens, increase their labor, or decrease the value of their property," without running afoul of the State constitution. *Id.*

In contrast to these established principles, Plaintiffs' strained reading of Maryland law would impair the State's ability to adopt a ban on possession of any

object or substance newly found by the legislature to be dangerous or deleterious, including weapons, explosive devices, animals, gaming devices, or drugs—no matter how compelling the State's interest in protecting public safety. If Plaintiffs' view were correct, public safety could be held to ransom by the prohibitive cost of compensating all owners who had acquired a newly-banned object or substance before its dangerousness became widely known. Fortunately, that is not the law of Maryland, which instead recognizes the General Assembly's power to regulate in these areas, "so that all may be bound; else . . . 'society will be at the mercy of the few, who . . . may be willing to imperil the peace and security of the many, provided only they are permitted to do as they please.'" *Sprigg v. Town of Garrett Park*, 89 Md. 406, 411 (1899) (quoting *Mugler*, 123 U.S. at 660-61).

V. THE DISTRICT COURT PROPERLY DISMISSED PLAINTIFFS' VAGUENESS CHALLENGE.

A. Plaintiffs Lack Standing to Bring Their Vagueness Challenge Because They Failed to Allege Any Credible Threat of Prosecution.

Plaintiffs erroneously contend that the district court erred by dismissing their vagueness claims under Rule 12(b)(1) for lack of standing. "Courts have an independent obligation to determine whether subject-matter jurisdiction exists, even when no party challenges it." *Hertz Corp. v. Friend*, 559 U.S. 77, 94 (2010). As this Court has long recognized, "[s]ubject-matter jurisdiction cannot be conferred by the parties, nor can a defect in subject-matter jurisdiction be waived by the parties."

Brickwood Contractors, Inc. v. Datanet Eng'g, Inc., 369 F.3d 385, 390 (4th Cir. 2004). Accordingly, "questions of subject-matter jurisdiction . . . may (or, more precisely, must) be raised *sua sponte* by the court." *Id.* Here, based on the allegations in Plaintiffs' complaint, the district court properly determined that Plaintiffs lacked standing to bring their vagueness challenge because they failed to allege any concrete or particularized injury.

This Court recently explained that "there is a sufficiently imminent injury in fact if plaintiffs allege [1] 'an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute, and [2] there exists a credible threat of prosecution thereunder.'" *Kenny v. Wilson*, 885 F.3d 280, 288 (4th Cir. 2018) (quoting *Babbitt v. Farm Workers Nat'l Union*, 442 U.S. 289, 298 (1979)). A credible threat of prosecution exists only if it "is not 'imaginary or wholly speculative,'" '"chimerical,'" or '"wholly conjectural.'" *Id.* (citations omitted).

The district court properly concluded that Plaintiffs failed to allege any "credible threat of prosecution" under the Act that would implicate the basis of their vagueness challenge. Plaintiffs assert that, when considered in isolation, a single clause of the General Assembly's definition of a rapid fire trigger activator—"the rate of fire increases"—is vague because it is broad enough to encompass devices that do not in any way modify, impact, or activate the trigger function to achieve

rapid fire. Plaintiffs allege that the generic definition can be read to encompass firearm accessories that "allow for faster, controlled follow-up shots," such as muzzle weights, fore grips, recoil-reducing devices, and devices that redirect flash. (J.A. 27-28, Comp. ¶ 62.) They also contend that because the Act does not by its terms limit its scope to devices that operate on semiautomatic weapons, accessories that "permit a user to more rapidly reload a revolver" could also be interpreted as minimally increasing the "rate of fire." (J.A. 28, Compl. ¶ 63.) As the district court distilled their argument, Plaintiffs suggest "that a literal reading of one clause" of the generic definition of a rapid fire trigger activator, "taken in isolation from the additional provisions that make up the definition section, might encompass devices that Plaintiffs themselves acknowledge are not 'in anyway [*sic*] akin to' and do not 'function like' the devices specifically named as 'rapid fire trigger activators' in the Act." (J.A. 251 (quoting Compl. ¶ 64).)

To illustrate the speculativeness of that scenario, the district court explained that, for Plaintiffs to suffer injury-in-fact under their theory, "an enforcement agent would need to conclude that a 'rapid fire trigger activator' includes accessories that, in Plaintiffs' own words, do not 'attach[] to or serve to operate the trigger'. . . and then actually attempt to enforce the Act accordingly, without any superseding authority intervening." (J.A. 251-52 (quoting Compl. ¶ 64).) Thus, from Plaintiffs' own representations the district court concluded that "Plaintiffs simply have not

alleged any facts suggesting that the threat of such enforcement rises above pure 'speculation' and 'conjecture.'" (J.A. 252 (quoting *City of Los Angeles v. Lyons*, 461 U.S. 95, 108 (1983) (dismissing as "conjecture" the notion that police will routinely enforce the law unconstitutionally and as "speculation" the possibility that the plaintiff would be subjected to a future traffic stop involving an arrest and use of a chokehold).)

The much different cases Plaintiffs cite offer nothing to contradict the district court's conclusion. In *Kenny v. Wilson*, a First Amendment case, this Court found that high school students challenging two South Carolina disorderly conduct statutes alleged a credible threat of enforcement, "because these three plaintiffs regularly attend schools where they allege there may be future encounters with school resource officers or other law enforcement; they have been prosecuted under the laws in the past; and the defendants have not disavowed enforcement if plaintiffs engage in similar conduct in the future." *Id.* at 289. Here in contrast, as the district court articulated, there has been no threat or even any suggestion of enforcement of the Act as to the accessories described in paragraphs 62-64 of Plaintiffs' complaint (J.A. 27-28), and Governor Hogan, represented by the Attorney General of Maryland, has expressly disavowed that the statute can be enforced as broadly as Plaintiffs assert. Nevertheless, Plaintiffs suggest that a rogue prosecutor may seek to prosecute one of them for possessing a firearms accessory that is neither akin to nor functions like

one of the enumerated "rapid fire trigger activator" devices. Such speculation, they contend, is sufficient to establish standing. They cite no authority for this proposition, which is directly contrary to the holdings in *Babbitt* and *Kenny*, both requiring a "credible threat" of enforcement.

Kolbe v. Hogan also is inapposite. There, the plaintiffs had argued that a device expressly banned by Maryland's prohibition on assault weapons—a "copy" of the specifically-enumerated banned firearms—was undefined and, thus, subject to arbitrary enforcement because the law provided no guidance as to what constituted a "copy." *Kolbe*, 849 F.3d at 148. Here, Plaintiffs have not alleged that a "rapid fire trigger activator" is undefined and, thus, subject to arbitrary enforcement. Rather, they allege that the term "rapid fire trigger activator," which is defined in the Act generically and through enumeration of specific devices and express omission of others, may be enforced in an overbroad manner to reach firearms accessories that are not expressly banned or in any way akin to devices that are expressly banned. Absent any credible threat that the statute will be enforced in that way, the district court properly dismissed the vagueness claim for lack of standing.

Plaintiffs also incorrectly rely on *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118 (2007), which involved a plaintiff's standing to challenge "threatened enforcement action of a *private party* rather than the government," *id.* at 130 (emphasis in original), a circumstance the Court analogized to a challenge to "the

constitutionality of a law *threatened* to be enforced," *id.* at 128-29 (emphasis added). Such threatened enforcement is absent here. And both *Sessions v. Dimaya*, 138 S. Ct. 1204, 1212 (2018), and *Johnson v. United States*, 135 S. Ct. 2551, 2557 (2015), involved challenges to the *actual* enforcement of allegedly vague statutes.

Finally, Plaintiffs contend that the district court erred by construing the defendant's motion to dismiss for failure to state a claim as a motion to dismiss for lack of subject matter jurisdiction, after determining that Plaintiffs had failed to allege Article III standing.[9] But the Federal Rules require that if a "court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the

[9] Plaintiffs contend that the "fully briefed" motion to dismiss gave them no notice of any jurisdictional defect, which might have enabled them "to amend their complaint" before dismissal of the vagueness claim. Appellants' Br. 12. On the contrary, in briefing the motion to dismiss, Governor Hogan argued in reply that Plaintiffs "lack standing to bring this vagueness challenge. . . . Nor do any of the plaintiffs allege that they are under any threat of enforcement of the [Act] in the way they purport to interpret it, and, thus, their claims are not ripe for review." (J.A. 216-17 (citing, *inter alia*, *Doe v. Virginia Dep't of State Police*, 713 F.3d 745, 759 (4th Cir. 2013) ("The hardship prong of our ripeness analysis is 'measured by the immediacy of the threat and the burden imposed on the petitioner who would be compelled to act under threat of enforcement of the challenged law.'" (citation omitted).) As *Doe* explains, "[r]ipeness analysis holds much in common with standing analysis." 713 F.3d at 758 n.10 (noting that "the reasons for which the majority of Doe's claims are not ripe are essentially the same as the reasons for most of her alleged injuries are not redressable"). Despite having notice of these jurisdictional deficiencies nearly two months before the court dismissed the action (*see* J.A. 5, Dkt. Nos. 33, 35), Plaintiffs chose not to amend their pleadings.

action." Fed. R. Civ. P. 12(h)(3). Plaintiffs' having failed to allege sufficient facts to establish Article III standing, the district court properly dismissed the claim.

Plaintiffs invoke inapposite cases where courts *sua sponte* raised affirmative statutes of limitations defenses, dismissed cases for failure to state a claim, or granted summary judgment. Appellants' Br. 13-14. Plaintiffs fail, however, to cite any authority indicating that a district court *must* allow plaintiffs an opportunity to amend their complaint to fulfill their obligation to allege sufficient factual allegations to establish Article III standing. The best they can do is cite *Warth v. Seldin*, 422 U.S. 490 (1975), where the Supreme Court discussed the district court's discretionary power to allow plaintiffs to amend pleadings to supply "further particularized allegations of fact deemed supportive of plaintiff's standing," *id.* at 501. As this Court has explained, the quoted sentence in "*Warth* stands only for the proposition . . . that a district court *may*, but is not *required*" to proceed in that manner. *McBurney v. Cuccinelli*, 616 F.3d 393, 409 (4th Cir. 2010); *see Drager*, 741 F.3d at 474 ("[T]he 'grant or denial of an opportunity to amend [a complaint] is within the discretion of the district court.'" (citations omitted)). Notably, Plaintiffs have not argued that the district court abused its discretion, nor have they suggested how they could have amended their complaint to cure the jurisdictional defect it found.

B. The Act's Terms Are Not Void for Vagueness.

The district court's dismissal of Plaintiffs' vagueness challenge can be affirmed on the alternative ground, raised below (J.A. 69-76, 216-23), that Plaintiffs' vagueness challenge failed to state a claim for relief. *Drager*, 741 F.3d at 474. Plaintiffs contend the Act is void for vagueness because the generic definition of "rapid fire trigger activator" can be interpreted to encompass firearms' accessories "Plaintiffs themselves acknowledge are not 'in anyway [*sic*] akin to' and do not 'function like' the devices specifically named as 'rapid fire trigger activators' in the Act." (J.A. 251 (quoting Compl. ¶ 64).)

"It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined." *Grayned v. City of Rockford*, 408 U.S. 104, 107 (1972). However, a statute is unconstitutionally vague only if it "fails to provide a person of ordinary intelligence fair notice of what is prohibited, or is so standardless that it authorizes or encourages seriously discriminatory enforcement." *United States v. Williams*, 553 U.S. 285, 304 (2008). Courts "do not hold legislators to an unattainable standard when evaluating enactments in the face of vagueness challenges." *Wag More Dogs, LLC v. Cozart*, 680 F.3d 359, 371 (4th Cir. 2012) . "'A statute need not spell out every possible factual scenario with 'celestial precision' to avoid being struck down on vagueness grounds.'" *United States v. Hager*, 721 F.3d 167, 183 (4th Cir. 2013) (citation omitted). A statute "'must be

construed, if fairly possible, so as to avoid not only the conclusion that it is unconstitutional, but also grave doubts upon that score.'" *Id.* at 183 (citation omitted). Thus, before finding a statute vague, a "federal court must 'consider any limiting construction that a state court or enforcement agency has proffered.'" *Martin v. Lloyd*, 700 F.3d 132, 136 (4th Cir. 2012) (quoting *Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 494 n.5 (1983)).

"In interpreting a state law, [this Court] appl[ies] the statutory construction rules applied by the state's highest court." *In re DNA Ex Post Facto Issues*, 561 F.3d 294, 300 (4th Cir. 2009) (citation omitted). Under the rules applied by the Court of Appeals of Maryland, statutory construction begins with the '"normal, plain meaning of the language of the statute, reading the statute as a whole to ensure that no word, clause, sentence or phrase is rendered surplusage, superfluous, meaningless or nugatory.'" *Phillips v. State*, 451 Md. 180, 196-97 (2017) (citations omitted). "If the language of the statute is clear and unambiguous, [courts] need not look beyond the statute's provisions and [their] analysis ends." *Id.* However, because '"[t]he meaning of the plainest language is controlled by the context in which it appears, . . . related statutes or a statutory scheme that fairly bears on the fundamental issue of legislative purpose or goal must also be considered.'" *Brown v. State*, 454 Md. 546, 551 (2017) (citation omitted). "[Legislative] purpose becomes the context within which [courts] apply the plain-meaning rule. Thus results that are unreasonable,

illogical or inconsistent with common sense should be avoided with the real legislative intention prevailing over the intention indicated by the literal meaning." *Smith v. State*, 425 Md. 292, 299 (2012) (citation omitted).

Where "there appear to be two or more reasonable alternative interpretations of [a statute's] language," the statute is ambiguous, and courts "must 'look beyond the statute itself and into the legislative history for guidance as to the intent of [the Legislature] in passing the statute.'" *Canaj, Inc. v. Baker & Div. Phase III, LLC*, 391 Md. 374, 403 (2006) (citations omitted). The court's "goal . . . is always to discern the legislative purpose, the ends to be accomplished, or the evils to be remedied by [the] particular provision." *Id.* (citation omitted).

Plaintiffs do not even discuss these rules, but instead depart from them by limiting the entirety of their analysis to a single phrase of the statutory definition of "rapid fire trigger activator." In so doing, they ignore the clear and undisputed legislative purpose of the Act, the statutory context in which the phrase is found, and common sense, all of which demonstrate that the challenged provision of the definition of a "rapid fire trigger activator," Crim. Law § 4-301(m)(1)(ii), is not susceptible to the broad interpretation on which Plaintiffs base their vagueness claim.

Beginning with the clearest indication of what the General Assembly intended to ban, the legislation made unlawful the manufacture, sale, and possession of a

"rapid fire trigger activator." This language itself "shed[s] light on legislative intent," *Canaj*, 391 Md. at 407, and, therefore, bears on the "fundamental issue of legislative purpose or goal [that] must . . . be considered" when interpreting Maryland statutes, *Brown*, 454 Md. at 551. Interpreting the definition of a "rapid fire trigger activator" in Plaintiffs' fashion, to encompass devices that do not in any way modify, activate or otherwise impact a firearm's trigger to enable rapid fire, would directly contradict the General Assembly's expression of what it intended to ban. The legislative record clearly articulates the "undisputed" legislative purpose of the Act to regulate devices that "modif[y a] firearm's rate of fire to mimic that of an automatic firearm." (J.A. 158, 82.)

Further, nothing in the statutory text defining "rapid fire trigger activator" can be read to ban unambiguously the devices described in paragraphs 62-64 of Plaintiffs' complaint. As set forth above, a "rapid fire trigger activator" is defined as "any device . . . constructed so that, when installed in or attached to a firearm: (i) the rate at which the trigger is activated increases; or (ii) the rate of fire increases." Crim. Law § 4-301(m)(1). This more generic definition is informed by the second definition of "rapid fire trigger activator," which further clarifies the scope of the ban by providing a list of specifically-enumerated devices that constitute a "rapid fire trigger activator." Crim. Law § 4-301(m)(2). These devices, in one way or another, all modify, activate, or otherwise affect the firearm's *trigger* function in a

way that allows the firearm to achieve rapid fire, mimicking fully automatic fire. *See* above at page 5. The definition's express exclusion of "a semiautomatic replacement trigger that improves the performance and functionality over the stock trigger," Crim. Law § 4-301(m)(3), further indicates that the Act was not intended to ban devices that improve the performance and functionality of a firearm but do not enable rapid fire that mimics automatic fire. Thus, the generic definition of "rapid fire trigger activator," when properly read in context, does not support the interpretation advanced by Plaintiffs, which would encompass devices that are not "attached to or serve to operate the trigger at any increased rate" nor "are in anyway akin to, or function like," the specifically-enumerated banned devices. (J.A. 28, Compl. ¶ 64.)

Even if it were permissible to isolate selected language from its statutory context, structure, and purpose, nothing in the text of the challenged provision supports Plaintiffs' interpretation of the Act's scope. The express language of the generic definition refers to devices that are "constructed so that, when installed in or attached to a firearm" a specific result occurs: "the rate at which the trigger is activated increases; or . . . the rate of fire increases." The use of "so that," modifying "constructed," indicates that the resulting increased rate is the *purpose* of the device's construction. *See* Webster's II New Riverside Univ. Dict. (defining use of "so that" to mean "in order that," which is defined as "for the purpose of"). The

language, thus, makes plain that the resulting increase occurs because of how the device itself was constructed for the purpose of accelerating the firearm's rate of fire, and does not extend to an accessory that might allow the user to increase the rate at which he or she loads a firearm, or might improve control to facilitate follow-up shots. (*See* J.A. 27-28, Compl. ¶ 62 (alleging statute could be read to apply to accessories that "increase, by some small measure, the effective 'rate of fire' in the sense that they allow for faster, controlled follow-up shots"); J.A. 28, Compl. ¶ 63 (alleging definition could include accessories that "permit a user to more rapidly reload a revolver and thus potentially increase the 'rate of fire' of the revolver").)

Moreover, even if the language were ambiguous, Maryland's highest court has instructed that courts must look to the "legislative history for guidance as to the intent of the Legislature in passing the statute," "to discern the legislative purpose, the ends to be accomplished, or the evils to be remedied" by the statutory provision. *Canaj*, 391 Md. at 403. Here, the legislative history demonstrates that after the deadliest mass shooting in the nation's history showcased the danger posed by devices constructed to modify a firearm's rate of fire to mimic that of an automatic firearm, the State set out to ban them.

Finally, the challenged Act is unlike those criminal prohibitions that have been deemed void for vagueness because they required "wholly subjective judgments without statutory definitions, narrowing context, or settled legal

meanings." *Williams*, 553 U.S. at 306 (referring to vague terms such as "annoying" or "indecent"). Rather, a "rapid fire trigger activator" is defined by the Act without reference to "wholly subjective" terms, and the scope of the definition is narrowed by the context of the statute as a whole.[10] Where a statute is capable of objective application, the potential risk that it may be enforced in a particular way is properly "the subject of an as-applied challenge," which Plaintiffs have not asserted. *Id.* at 302-03; *see also Vill. of Hoffman Estates*, 455 U.S. at 504 (explaining that even where "it is possible that specific future applications . . . may engender concrete problems of constitutional dimension, it will be time enough to consider any such problems when they arise" (citation omitted)); *Schleifer by Schleifer v. City of Charlottesville*, 159 F.3d 843, 853 (4th Cir. 1998) ("Nullification of a law in the abstract involves a far more aggressive use of judicial power than striking down a discrete and particularized application of it.").

[10] Although the plaintiffs contend that the "rate of fire" language "is unintelligible," Appellants' Br. at 28, it is the same term used by ATF to explain that "Bump-stock-type devices . . . are generally designed to channel recoil energy to increase the rate of fire of a semiautomatic firearm from a single trigger pull." 83 Fed. Reg. at 66, 516. Other states have used it as well. *See, e.g.*, Cal. Penal Code § 16930(b) (defining a "multiburst trigger activator" to include "[a] manual or power-driven trigger activating device constructed and designed so that when attached to a semiautomatic firearm it increases the rate of fire of that firearm").

VI. MSI LACKS ORGANIZATIONAL STANDING.

The district court properly concluded that MSI lacked organizational standing. An organization may suffer injury-in-fact and, thus, have standing to sue, where a defendant's actions impede its efforts to carry out its mission. *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982). Here, the only direct harm MSI alleges in its organizational capacity is the bare assertion that the Act "undermin[es] [MSI's] message and act[s] as an obstacle to the organization's objectives and purposes." (J.A. 11, Compl. ¶ 8.) Thus, Plaintiffs' allegations fall far short of those in *Havens*, where an organization devoted to equal housing opportunity alleged that the defendant's practices "perceptibly impaired [the organization's] ability to provide counseling and referral services for low- and moderate-income homeseekers," 455 U.S. at 379. As the district court concluded, MSI's alleged injury is no more than a "mere interest in a problem," which is not sufficient to establish standing, "no matter how longstanding the interest and no matter how qualified the organization is in evaluating the problem," *Sierra Club v. Morton*, 405 U.S. 727, 739 (1972).

CONCLUSION

The judgment of the United States District Court for the District of Maryland should be affirmed.

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE WITH RULE 32(a)

1. This brief complies with the type-volume limitations of Fed. R. App. P. 32(a)(7)(B) because this brief contains 12,868 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in Fourteen point, Times New Roman.

ADDENDUM OF PERTINENT PROVISIONS

United States Code Annotated

18 U.S.C. § 922. Unlawful acts.

***

(o)(1) Except as provided in paragraph (2), it shall be unlawful for any person to transfer or possess a machinegun.

(2) This subsection does not apply with respect to--

(A) a transfer to or by, or possession by or under the authority of, the United States or any department or agency thereof or a State, or a department, agency, or political subdivision thereof; or

(B) any lawful transfer or lawful possession of a machinegun that was lawfully possessed before the date this subsection takes effect.

26 U.S.C. § 5845. Definitions.

For the purpose of this chapter--

***

(b) *Machinegun*. — The term "machinegun" means any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger. The term shall also include the frame or receiver of any such weapon, any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machinegun, and any combination of parts from which a machinegun can be assembled if such parts are in the possession or under the control of a person.

Annotated Code of Maryland, Criminal Law Article (LexisNexis)

§ 4-301. Definitions.

(a) *In General*. — In this subtitle the following words have the meanings indicated.

***

(e) *Binary trigger system*. — "Binary trigger system" means a device that, when installed in or attached to a firearm, fires both when the trigger is pulled and on release of the trigger.

(f) *Bump stock*. — "Bump stock" means a device that, when installed in or attached to a firearm, increases the rate of fire of the firearm by using energy from the recoil of the firearm to generate a reciprocating action that facilitates repeated activation of the trigger.

(g) *Burst trigger system*. — "Burst trigger system" means a device that, when installed in or attached to a firearm, allows the firearm to discharge two or more shots with a single pull of the trigger by altering the trigger reset.

***

(k) *Hellfire trigger*. — "Hellfire trigger" means a device that, when installed in or attached to a firearm, disengages the trigger return spring when the trigger is pulled.

***

(m) *Rapid fire trigger activator*. — (1) "Rapid fire trigger activator" means any device, including a removable manual or power–driven activating device, constructed so that, when installed in or attached to a firearm:

(i) the rate at which the trigger is activated increases; or

(ii) the rate of fire increases.

(2) "Rapid fire trigger activator" includes a bump stock, trigger crank, hellfire trigger, binary trigger system, burst trigger system, or a copy or a similar device, regardless of the producer or manufacturer.

(3) "Rapid fire trigger activator" does not include a semiautomatic replacement trigger that improves the performance and functionality over the stock trigger.

(n) *Trigger crank*. — "Trigger crank" means a device that, when installed in or attached to a firearm, repeatedly activates the trigger of the firearm through the use of a crank, a lever, or any other part that is turned in a circular motion.

§ 4-305.1. Rapid fire trigger activator.

(a) *Prohibitions*. — Except as provided in subsection (b) of this section, a person may not:

(1) transport a rapid fire trigger activator into the State; or

(2) manufacture, possess, sell, offer to sell, transfer, purchase, or receive a rapid fire trigger activator.

(b) *Exceptions.* — This section does not apply to the possession of a rapid fire trigger activator by a person who:

(1) possessed the rapid fire trigger activator before October 1, 2018;

(2) applied to the federal Bureau of Alcohol, Tobacco, Firearms and Explosives before October 1, 2018, for authorization to possess a rapid fire trigger activator; and

(3) is in compliance with all federal requirements for possession of a rapid fire trigger activator.

§4–305.1. Rapid fire trigger activator [TAKES EFFECT OCTOBER 1, 2019 PER CHAPTER 252 OF 2018]

(a) *Prohibitions*. — Except as provided in subsection (b) of this section, a person may not:

(1) transport a rapid fire trigger activator into the State; or

(2) manufacture, possess, sell, offer to sell, transfer, purchase, or receive a rapid fire trigger activator.

(b) *Exceptions.* — This section does not apply to the possession of a rapid fire trigger activator by a person who:

(1) possessed the rapid fire trigger activator before October 1, 2018;

(2) applied to the federal Bureau of Alcohol, Tobacco, Firearms and Explosives before October 1, 2018, for authorization to possess a rapid fire trigger activator;

(3) received authorization to possess a rapid fire trigger activator from the federal Bureau of Alcohol, Tobacco, Firearms and Explosives before October 1, 2019; and

(4) is in compliance with all federal requirements for possession of a rapid fire trigger activator.

CERTIFICATE OF SERVICE

I certify that on April 12, 2019 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

/s/ Jennifer L. Katz
Signature

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