IN THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY, MARYLAND

MARYLAND SHALL ISSUE, INC., *et al.,*	*	
	*	
Plaintiffs,		
	*	
v.		Case No.: C-02-CV-22-000217
	*	
ANNE ARUNDEL COUNTY, MD,		
	*	
Defendant.		

* * * * * * *

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANT'S
MOTION TO DISMISS OR ALTERNATIVELY FOR SUMMARY JUDGMENT

Defendant, Anne Arundel County, Maryland, by and through Hamilton Tyler, Deputy County Attorney, and M. Brooke McKay, Assistant County Attorney, pursuant to Maryland Rules 2-322 and 2-501, files this Memorandum of Law in Support of its Motion to Dismiss or, Alternatively, for Summary Judgment and states for cause to this Honorable Court:

INTRODUCTION

On December 6, 2021, Councilman Andrew Pruski of the County Council of Anne Arundel County, Maryland ("County Council") introduced Bill No. 109-21 entitled *Public Safety – Security Measure for the Sale of Firearms* ("Bill" or "Code Provision"). *See* Exhibit 1. The purpose of the Bill is to address the security measures required in connection with the commercial sale of firearms in Anne Arundel County to minimize potential security vulnerabilities of gun dealers and gun shows. The Bill is designed to ensure that gun dealers and promoters of gun shows are adequately securing the firearms. Such measures not only serve to deter criminals, but also help diminish the

likelihood of a successful burglary or theft. Proper security protocols will help protect the community from being flooded with untraceable firearms in the event of a theft.

The Bill requires gun dealers that operate within 100 yards of or in a park, house of worship, school, public building, or other place of public assembly to comply with certain security protocols. The Bill defines a "place of public assembly" as a "location used for a gathering of 50 or more persons for deliberation, worship, entertainment, eating, drinking, amusement, shopping, awaiting transportation, or similar uses." It further requires dealers that transport firearms for sale to possess an inventory list. Lastly, the Bill requires a person promoting or sponsoring a gun show to have Police Department approval of security measures. It is a Class C Civil Offense to violate the provisions of the Bill.

A public hearing on the Bill was held on January 3, 2022. On January 10, 2022, Bill No. 109-21 was approved and enacted into law. The Bill became effective on February 24, 2022. The provisions apply to existing firearm dealers within 180 days after the effective date of the Bill.

On February 7, 2022, the Plaintiffs filed a four-count Complaint seeking declaratory and injunctive relief. On February 11, 2022, the Plaintiffs amended the Complaint asserting the following counts:

Count I: Violation of the Maryland Constitution;

Count II: Violation of the Express Powers Act;

Count III: Impliedly Preemption; and

Count IV: Violation of the Maryland Due Process Clause.

Plaintiffs seek declaratory and injunctive relief.

For the reasons that follow, the Amended Complaint fails to state a claim upon which relief can be granted as a matter of law or, alternatively, the County is entitled to judgment as a

matter of law. First, Plaintiff Maryland Shall Issue, Inc. lacks standing to bring this suit because it has not alleged any cognizable harm beyond speculative potential future harm to its members. Further, the Plaintiffs have failed to state a claim that the Bill is not a valid local law, is in violation of the Express Powers Act, or is preempted by State law because the County was authorized by State law to enact it. The Amended Complaint also fails to state a claim for either substantive or procedural due process violations because its prohibitions are clearly defined and not vague, and because the County Council held a public hearing prior to its passage.

Alternatively, the County is entitled to summary judgment and a declaration in its favor on each count in the Complaint. As to Count I, the Bill is a valid local law under Md. Const. Art. XI-A (the Home Rule Amendment). As to Count II and III, the Bill is authorized by, and not preempted by or in conflict with, State law. With respect to Count IV, the Bill is not void for vagueness as the prohibitions are clearly defined and thus do not violate the Due Process Clause. For all of these reasons, the Court should grant the County's Motion and dismiss the Amended Complaint with prejudice, or in the alternative, enter summary judgment as a matter of law in favor of the County. On the Plaintiffs' request for declaratory relief, the Court should declare that the Bill is valid and allow it to remain in effect.

LEGAL STANDARD

It is important to note at the outset that the wisdom of the legislative findings supporting the Bill is not on trial. Plaintiffs cannot challenge whether the County Council "was correct" in its legislative findings. *Md. Aggregates Ass'n, Inc. v. State*, 337 Md. 658, 668, 655 A.2d 886, 891 (1995) ("the wisdom or expediency of a law adopted by a legislative body is not subject to judicial review"). Rather, the question is whether the Bill violates the specific constitutional and statutory provisions alleged in the Complaint.

Dismissal

Maryland Rule 2-322 (b) provides that the defense of failure to state a claim upon which relief can be granted may be raised by a motion to dismiss at any time before or after the Answer. When reviewing a motion to dismiss, a court need not consider mere conclusory charges that have no factual support or basis, and any ambiguity or uncertainty in the allegations must be construed against the pleader. *Berman v. Karvounis*, 308 Md. 259, 265, 518 A.2d 726, 728 (1987); *Figueiredo-Torres v. Nickel*, 321 Md. 642, 647, 584 A.2d 69, 72 (1991). Where the facts and allegations, even if proven, would nonetheless fail to afford the plaintiffs relief, dismissal is proper. *Board of Educ. v. Browning*, 333 Md. 281, 286, 635 A.2d 373, 376 (1994); *Faya v. Almaraz*, 329 Md. 435, 443, 620 A.2d 327, 330 (1993). *See also Manikhi v. Mass Transit Admin.*, 360 Md. 333, 342-45, 758 A.2d 95, 100-103 (2000); P.V. Niemeyer & L.M. Schuett, *Maryland Rules Commentary* 190-192 (2d ed. 1992).

Ultimately, a defendant may successfully move to dismiss a complaint by showing that even if all of the plaintiff's allegations are proven to be true, the complaint itself would still fail as a matter of law. *See Heritage Harbour v. Reynolds*, 143 Md. App. 698, 704, 796 A.2d 806, 809 (2002)(quoting *Lubore v. RPM Assocs*., 109 Md. App. 312, 322-23, 674 A.2d 547, 552 (1996)).

Summary Judgment

Summary judgment is governed by MD. RULE 2-501 which states that "[a]ny party may make a motion for summary judgment on all or part of an action on the ground that there is no genuine dispute as to any material fact and that the party is entitled to judgment as a matter of law." The purpose of summary judgment is to "dispose of cases where there is no genuine factual controversy." *Harris v. Stefanowicz Corp.,* 26 Md. App. 213, 337 A.2d 455 (1975). The burden then shifts to the non-moving party to show facts, which would be admissible in evidence, that

demonstrate there is a real dispute between the parties and the dispute must be material to the outcome. *Knisley v. Keller*, 11 Md. App. 269, 273 A.2d 624, *cert. denied*, 261 Md. 726 (1971). When a party opposes summary judgment, the "mere existence of *some* alleged factual dispute between the parties will not defeat an otherwise properly supported motion … the requirement is that there is no *genuine* issue of *material* fact." *Beatty v. Trailmaster Prods., Inc.*, 330 Md. 726, 738, 625 A.2d 1005, 1011 (1993) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-48 (1986) (emphasis in original)). "[T]he mere existence of a scintilla of evidence in support of the Plaintiff's claim is insufficient to preclude the grant of summary judgment; there must be evidence upon which the jury could reasonably find for the Plaintiff." *Beatty* at 738-39, 625 A.2d at 1011-12. For the reasons articulated below, the Court should enter summary judgment in favor of the County because there are no material facts in dispute and the County is entitled to judgment as a matter of law.

Declaratory Judgment

Where a declaratory judgment action is properly brought and considered for summary judgment, the trial court must issue a written declaration of the parties' rights, even if it is not the declaration sought by the plaintiff. *Herlson v. RTS Residential Block 5, LLC*, 191 Md. App. 719, 730, 993 A.2d 699, 706 (2010); *Md. Cas. Co. v. Hanson*, 169 Md. App. 484, 524, 902 A.2d 152, 175 (2006); *East v. Gilchrist*, 293 Md. 453, 461 n.3, 445 A.2d 343, 347 n.3 (1982) ("where a plaintiff seeks a declaratory judgment . . ., and the court's conclusion . . . is exactly opposite from the plaintiff's contention, nevertheless the court must, under the plaintiff's prayer for relief, issue a declaratory judgment"). Where the court's declaration is in line with the defendant's argument, it is also proper for the court to issue that declaration upon a motion for summary judgment by the defendant. *Griffin v. Anne Arundel County*, 25 Md. App. 115, 137, 333 A.2d 612, 624 (1975).

The trial court must issue a separate written declaration. Although the judgment may recite that it is based on reasoning set forth in an accompanying memorandum, it cannot simply incorporate by reference an earlier oral ruling. *Salamon v. Progressive Classic Ins. Co*., 379 Md. 301, 308 n.7, 841 A.2d 858, 862 (2004).

UNDISPUTED MATERIAL FACTS

The following facts are not in dispute and entitle the County to judgment as a matter of law. The Bill created an additional Title to the Anne Arundel County Code. Specifically, it created "Article 12 Public Safety, Title 6, Security Measures for the Sale of Firearms." **Exhibit 1.**

Plaintiff Maryland Shall Issue, Inc. ("MSI"), is a Maryland corporation located in Baltimore, Maryland. (Amended Compl. ¶ 18). According to the Amended Complaint, the organization is a Section 501(c)(4), non-profit membership organization with approximately 2,000 members statewide, and promotes the acquisition of firearms in Anne Arundel County. *Id*. It is allegedly an "all-volunteer, non-partisan organization dedicated to the preservation and advancement of gun owners' rights in Maryland." *Id*.

Plaintiffs Field Traders, LLC ("Field Traders"), Cindy's Hot Shots, Inc. ("Cindy's Hot Shots"), Pasadena Arms, LLC ("Pasadena Arms"), and Worth-A-Shot, Inc. ("Worth-A-Shot") are Maryland companies located in Anne Arundel County, Maryland. (Amended Complaint ¶ 21-23). According to the Amended Complaint, they are Federally and State licensed firearms dealer who are "arguably within 100 yards of a place of assembly" as defined by the Bill. *Id.*

ARGUMENT

I. Plaintiff Maryland Shall Issue, Inc. Lacks Organizational Standing

In Maryland, an organization has standing to bring a judicial action if it has a "property interest of its own— separate and distinct from that of its individual members." *Med. Waste Assocs.*

v. Md. Waste Coal., 327 Md. 596, 612, 612 A.2d 241, 249 (1992).[1] Such a property interest is shown if that organization "has also suffered some kind of special damage from such wrong differing in character and kind from that suffered by the general public." *Id*. at 613, 250. *See also Kendall v. Howard Cty*., 431 Md. 590, 603, 66 A.3d 684, 691 (2013)("Under Maryland common law, standing to bring a judicial action generally depends on whether one is 'aggrieved,' which means whether a plaintiff has 'an interest such that he [or she] is personally and specifically affected in a way different from ... the public generally.'"); *Sugarloaf v. Dep't of Environment*, 344 Md. 271, 288, 686 A.2d 605, 614 (1996), and cases there cited. "The doctrine of standing is an element of the larger question of justiciability and is designed to ensure that a party seeking relief has a sufficiently cognizable stake in the outcome so as to present a court with a dispute that is capable of judicial resolution." *Hand v. Mfrs. & Traders Trust Co.,* 405 Md. 375, 399, 952 A.2d 240, 254 (2008).

"The mere fact that an individual or group is opposed to a particular public policy does not confer standing to challenge that policy in court." *Evans v. State*, 396 Md. 256, 329, 914 A.2d 25, 68 (2006). "[E]nsuring that State officials operate legally...is no different than the interest of all Maryland citizens." *Id*. In *Evans*, The Court of Appeals held that civil rights organizations lacked standing to bring an action for injunctive relief enjoining Department of Corrections from carrying out lethal injections under its existing protocols. The organizations only asserted basis for standing was their shared opposition to capital punishment and their desire to see that the death penalty was not carried out in violation of law. The organizations did not, and could not, allege that they would suffer any special damage or injury in absence of the relief sought.

[1] In 2009, the Legislature adopted amendments to the Maryland Code that changed the standing requirements for challenging certain environmental permits. Md. Code Ann., Envir. § 5–204(f). The instant challenge does not involve environmental issues.

MSI describes its mission on its website as "Maryland Shall Issue® (MSI) is an all volunteer, non-partisan organization dedicated to the preservation and advancement of gun owners' rights in Maryland. It seeks to educate the community about the right of self-protection, the safe handling of firearms, and the responsibility that goes with carrying a firearm in public."[2] MSI alleges in its Amended Complaint that "MSI has organizational standing to sue on its own behalf, as it is aggrieved by the enactment of Bill 109-21 because its organizational interest in protecting and promoting the acquisition of firearms by law-abiding citizens in Anne Arundel County is specifically and adversely affected by the enactment of Bill 109-21 in ways that are different in character and kind from that suffered by the general public." (Amended Compl. ¶ 20).

MSI has not plead facts to support that its interest in the case is separate and distinct from its members. Neither has MSI plead potential damage differing from the general public. MSI's particular public policy priority— the "preservation and advancement of gun owners' rights in Maryland" - is insufficient to establish standing. MSI as an organization is unaffected by the Code provision. MSI will never seek to sell guns in Anne Arundel County. For these reasons, MSI lacks standing and its claims against the County fail as a matter of law.

II. Bill 109-21 is a Valid Local Law and Does Not Violate the Maryland Constitution

Count I fails because the Bill is a valid local law. Article XI-A of the Maryland Constitution provides counties electing a charter form of government with a certain measure of independence from the State legislature by providing for the transfer, within well-defined limits, of certain legislative powers formerly reserved to the General Assembly. Ratified by the voters of this State in November 1915, Md. Const. Art. XI-A, also known as the "Home Rule Amendment," was intended to secure to Maryland citizens "the fullest measure of local self-government" with respect to their

[2] https://www.marylandshallissue.org/jmain/index.php. Last accessed March 16, 2022.

local affairs. *State v. Stewart*, 152 Md. 419, 422, 137 A. 39, 41 (1927). The Home Rule Amendment "freed[]" counties from the General Assembly's "interference," *City of Balt. v. Sitnick*, 254 Md. 303, 311, 255 A.2d 376, 379 (1969), and bridged the gap between the policy decisions of detached state legislators and the actual preferences of local constituents, *Ritchmount P'ship v. Bd. of Supervisors of Elections*, 283 Md. 48, 56, 388 A.2d 523, 528 (1978).

Section 2 of the Home Rule Amendment mandates that the General Assembly expressly enumerate and delegate those powers exercisable by counties electing a charter form of government and, in 1918, the legislature enacted the Express Powers Act, Md. Code Ann., presently codified at Md. Code Ann., Local Gov't. (LG) § 10-101, *et seq*., which endowed charter counties with a wide array of legislative and administrative powers over local affairs.

Under Section 3 of the Home Rule Amendment, a charter county has full power to enact "local laws" on any subject covered by the Express Powers Act. A charter county also has the power to appeal or amend public local laws enacted by the General Assembly upon all matters covered by the Express Powers Act. LG § 10-202(a). Section 4 of the Home Rule Amendment states that "[a]ny law so drawn so as to apply to two or more of the geographical subdivisions of this State shall not be deemed a Local Law within the meaning of this Act." *See Steimel v. Board of Election Supervisors*, 278 Md. 1, 5, 357 A.2d 386, 388 (1976); *State's Attorney v. City of Baltimore*, 274 Md. 597, 607, 337 A.2d 92, 98-99 (1975). The Home Rule Amendment otherwise "attempts no definition of the distinction between a local law and a general law but leaves that question to be determined by the application of settled legal principles to the facts of particular cases in which the distinction may be involved." *McCrory Corp. v. Fowler*, 319 Md. 12, 17, 570 A.2d 834, 836 (1990).

When, like here, the application of a county law is limited to the enacting county, Maryland courts will invalidate that law only it if clearly intruded on some well-defined State interest. *Tyma v. Montgomery Cnty.*, 369 Md. 497, 513, 801 A.2d 880, 157 (2002). "In Maryland, the creation of new causes of action in the courts has traditionally been done either by the General Assembly or by this Court under its authority to modify the common law of this State." *McCrory*, 319 Md. at 20, 570 A.2d at 838.

This Bill is a local law. First, its application is limited to Anne Arundel County. Unlike the local law in *Holiday Universal, Inc. v. Montgomery Cnty.*, 377 Md. 305, 833 A.2d 518 (2003), the Bill does not apply outside of the County.

Second, unlike the other local law struck down in *McCrory*, the Bill is specifically authorized by State law. Md. Code Ann., Crim. Law (CL) § 4-209(b) empowers the County to enact this law (and, as discussed below, the Bill is within the confines of that authorization).

Finally, a local enactment does not cease to be a local law under Home Rule Amendment merely because it regulates a matter that is also of interest to the State. If that were the test, few local regulations would pass muster. For example, although abusive employment practices constitute a statewide problem which have been addressed by the General Assembly, the Court of Appeals recognized that the County could still create administrative remedies to address the matter. *McCrory Corp. v. Fowler*, 319 Md. 12, 20, 570 A.2d 834, 837. What the County could not do was create a new **private judicial** cause of action. Likewise, discrimination in housing and places of public accommodation may also be a statewide matter of concern (that has also been addressed by the General Assembly), but the County could create administrative remedies to address those evils as well. *Holiday Universal Club of Rockville, Inc. v. Montgomery County*, 67 Md. App. 568, 508 A.2d 991, *cert. denied*, 307 Md. 260 (1986) (sustaining a county's public accommodation law). The Bill

is a valid local law and the County requests that this Court enter a declaratory judgment to that effect. For these reasons, Count I fails and the County is entitled to judgment as a matter of law.

III. Bill 109-21 Does Not Violate the Express Powers Act

Count II alleges that the Bill violates the Express Powers Act, but fails to recognize that the Bill is not in conflict with State law. The Express Powers Act is "broadly construed" to enable charter counties such as Anne Arundel County to "legislate **beyond the powers expressly enumerated**," thereby fostering "peace, good government, health, and welfare of the County." *Snowden v. Ann Arundel Cty*., 295 Md. 429, 432, 456 A.2d 380, 381 (1983) (emphasis added) (citing Express Powers Act). Together, the Home Rule Amendment and the Express Powers Act vest charter counties with significant power on the theory that "the closer those who make and execute the laws are to the citizens they represent, the better ... those citizens [are] represented and governed in accordance with democratic ideals." *Ritchmount P'ship v. Bd. of Supervisors of Elections*, 283 Md. 48, 56, 388 A.2d 523, 528 (1978).

The broadest authority for local legislation exists in LG § 10-206 of the Express Powers Act. This is often referred to as the "general welfare clause" because it grants charter counties the power to legislate on matters not specifically enumerated elsewhere. *Montgomery Citizens League v. Greenhalgh*, 253 Md. 151, 161, 252 A.2d 242, 247 (1969) (referring to the predecessor statute Md. Code Ann., Art. 25A, § 5(S)). LG § 10-206 empowers charter counties to enact local laws "not preempted by or in conflict with public general law" that "may aid in maintaining the peace, good government, health, and welfare of the county." In *Greenhalgh*, the Maryland Court of Appeals relied upon § 5(S) to uphold Montgomery County's authority to enact a fair housing law even though the Express Powers Act did not specify that power and explained that "[t]he broadest grant of powers customarily is to home rule Counties . . . and cases holding that a

delegation was restricted or narrow are concerned almost always with delegations to municipalities that do not enjoy home rule." *Greenhalgh*, 253 Md. at 162, 252 A.2d at 247. [3]

Count II here fails for the same reason. The Plaintiffs claim that the Bill violates the Express Powers Act because it is preempted by MD Code, Criminal Law § 4-209, Public Safety § 5-104, § 5-133(a), § 5-134(a), and § 5-207, and § 6 of Ch. 13 of Session Laws of 1972 of Maryland. The Bill is not preempted by, or in conflict with, any of these laws because it is specifically authorized by CL § 4-209(b). CL § 4-209 authorizes a county, municipal corporation, or special taxing district to regulate the purchase, sale, taxation, transfer, manufacture, repair, ownership, possession, and transportation of a handgun, rifle, or shotgun, and ammunition for and components of a handgun, rifle, or shotgun within 100 yards of or in a park, church, school, public building, and other place of public assembly. This Bill fits squarely within the authority of CL § 4-209. For this reason alone, the County is entitled to judgment as a matter of law on Count II.

IV. Bill 109-21 is Not Preempted by State Law

The Plaintiffs alleged in Count III that the Bill is preempted by State law. But the law speaks for itself. The Court of Appeals has held that an otherwise valid local law may be preempted by State law in three ways: (1) by conflict, (2) expressly, or (3) by implied preemption. *State v. Phillips*, 210 Md. App. 239, 63 A.3d 51 (2013)(citing *Montrose Christian Sch. Corp v. Walsh*, 363 Md. 565, 579 n. 5, 770 A.2d 111, 119 n. 5 (2001). See also, *Tyma v. Montgomery County*, 369 Md. 497, 517 n. 16, 801 A.2d 148, 159 n. 16 (2002). None of those methods are applicable here and as a result Count III must fail as a matter of law.

[3] Maryland court have sustained a wide variety of local legislation under the Home Rule Amendment and LG § 10-206 of the Express Powers Act. *See FOP v. Montgomery Cty.*, 446 Md. 490, 518-19, 132 A.2d 311, 327 (2016) (upholding county spending to support a proposed charter amendment on the ballot); *Tyma v. Montgomery Cnty., Md.*, 369 Md. 497, 801 A.2d 148 (2002) (sustaining the county's domestic partnership benefits law).

A. <u>The Bill is not in Conflict with CL § 4-209</u>.

The Plaintiffs cannot show that the Bill is in conflict with State law. "A local law is preempted by conflict when it prohibits an activity which is intended to be permitted by state law, or permits an activity which is intended to be prohibited by state law." *Talbot County v. Skipper*, 329 Md. 481, 493 n. 4, 620 A.2d 880, 883 n. 4 (1993). Essentially a political subdivision like a County may not prohibit what the State by general public law has permitted. On the other hand, a County "may prohibit what the State has not **expressly** permitted." *Montgomery Cty. v. Complete Lawn Care, Inc*., 240 Md. App. 664, 688, 207 A.3 695, 709 (2019) (emphasis in original) (internal quotations and citations omitted). "Conflict preemption occurs when a local law prohibits an activity which is intended to be permitted by state law, or permits an activity which is intended to be prohibited by state law." *Id.* Maryland courts have long followed the concurrent powers doctrine, committed to the principle that "[a]dditional regulation by [a local] ordinance does not render [the local ordinance] void" even though the state may have enacted statutes regulating a field. *Rossberg v. State*, 111 Md. 394, 74 A. 581 (1909) (citation omitted); accord *E. Tar Prods. Corp. v. State Tax Comm'n of Maryland*, 176 Md. 290, 296-97, 4A.2d 462, 464-65 (1939) (observing that a local law requiring "more than the [state] statute requires creates no conflict").

The Plaintiffs allege that regulating the dealers and barring dealers that the County finds in non-compliance constitutes prohibiting an activity which is permitted by State law. However, relying on Public Safety § 5-104 (preempting local jurisdictions from regulating the sale of a regulated firearm), § 5-133(a) (preempting local jurisdictions from regulating the possession of a regulated firearm), § 5-134(a) (preempting local jurisdictions from regulating the transfer of a regulated firearm), and § 5-207 (preempting local jurisdictions from regulating the transfer of a rifle or shotgun), and § 6 of Ch. 13 of Session Laws of 1972 of Maryland (an uncodified provision

preempting a political subdivision from regulating the wearing, carrying, or transporting of handguns) to support their argument is misplaced. It is readily apparent that these four provisions, generally preempting local regulation of the sale, possession, transfer, and wearing, carrying, or transporting of a firearm, are broader than CL § 4-209(b)'s narrower grant of authority to local jurisdictions to regulate those same aspects of firearms **with respect to minors and within 100 yards of a place of public assembly**. In other words, CL § 4-209(b) can (and should) be read exactly as intended and written: an exception to the otherwise general preemption in these other statutes and, of course, a specific exception to the preemption in CL § 4-209(a). In this way, these firearm statutes can be read in harmony, avoiding a strained reading that, contrary to accepted cannons of statutory interpretation, would render nugatory the grant of authority in CL § 4-209(b). The Bill is not in conflict with CL § 4-209 and for these reasons, Count II should fail.

B. <u>The Bill is Not Expressly or Impliedly Preempted</u>.

Express preemption is when the General Assembly prohibits local legislation in a particular field by express statutory language. *Montgomery Cnty. v. Complete Lawn Care, Inc.*, 240 Md. App. 664, 686, 207 A.3d 695, 708 (2019). There is no dispute that the State has expressly preempted some local regulation of firearms, however, it has also expressly created an exception in CL § 4-209 (b), authorizing local regulation of firearms relative to minors and near places of public assembly. It is under this exception that the Bill is authorized. For this reason alone, the Plaintiffs cannot show that the Bill is expressly preempted.

Nor can Plaintiffs demonstrate that it is impliedly preempted. Preemption by implication, or "implied preemption," occurs when the Legislature "has acted with such force that an intent by the State to occupy the entire field" must be inferred. *Talbot County v. Skipper*, 329 Md. 481, 488, 620 A.2d 880, 883 (1993)(citing *County Council v Montgomery Ass'n*, 274 Md. 52, 333 A.2d 596

(1975). The State law does not impliedly preempt Bill 109-21. There is no "unequivocal conduct of the General Assembly" that "manifest[s] a purpose to occupy exclusively a particular field*." Bd. of Child Care of Balt. Annual Conference of the Methodist Church, Inc. v. Harker,* 316 Md. 683, 697, 561 A.2d 219, 226 (1989). The General Assembly must "act[] with such force that an intent by the State to occupy the entire field must be implied." *Skipper,* at 488 *(citation omitted); see also City of Balt. v. Sitnick,* 254 Md. 303, 323, 255 A.2d 376, 385 (1969).

Given that implied preemption is the search for legislative intent to preempt in the absence of express legislative guidance, application of that doctrine is inappropriate where the State law expressly **authorizes** local regulation, as is the case here. In other words, this Court should not seek to divine whether the General Assembly intended to preempt the County from regulating handguns, rifles, or shotguns within 100 yards of a place of public assembly when the General Assembly has expressly authorized the County to do just that in CL § 4-209(b).

In *State v. Phillips*, 210 Md. App. 239, 63 A.3d 51 (2013), the court considered Baltimore City's Gun Offender Registration Act, which was a local ordinance that required persons convicted of delineated gun offenses to register with the Police Commissioner of Baltimore City. One of the issues addressed by the court was whether the Act was void because the State had preempted the field. *Id*. at 246, 55. Similar to the Plaintiffs' argument, the Appellee contended that because the "state enacted numerous laws regarding guns, including, criminalizing the use of certain guns in the commission of crimes, and the possession of certain firearms by someone previously convicted of certain crimes, regulating the transfer and purchase of certain guns, the storage of certain guns and the discharge of guns in certain locations and requiring the registration of certain guns with the police" that the State has preempted the field. *Id*. at 278, 74 (internal quotations omitted). The court concluded that State law did not expressly or impliedly preempt

Baltimore City's Gun Offender Registration Act. Specific to implied preemption, the court concluded that, although the State has heavily regulated the field of use, ownership, and possession, of firearms, it has not so extensively regulated the field that all local laws relating to firearms are preempted. *Id*. at 280-281, 75. The court quoted 93 Md. Op. Att'y Gen. 126 (2008) (opining that the Baltimore City law was not preempted), where the Attorney General noted that although the State has broadly preempted much local regulation, it has also "enacted specific exceptions to that preemption," where local regulation is authorized.

For these reasons, the Bill has not been preempted by State law and Count III fails as a matter of law. In the alternative, the Court should grant judgment in favor of the County and declare that the Bill is a valid local law and not preempted by State law.

V. The Bill Does Not Violate the Plaintiffs' Due Process Rights Under Article 24.

Count IV alleges that the County violated the Article 24 rights of the Plaintiffs to be free from due process violations by the passage of the Bill by the County Council. It is not clear whether the Plaintiffs are complaining that their procedural or substantive due process rights have been violated, but either way, Count IV must fail and the County is entitled to judgment as a matter of law. The undisputed facts are that the County Council lawfully enacted the Bill and followed all procedures, including a public hearing on the Bill's passage. The Plaintiffs are hard pressed to make a procedural due process claim.

Nor can the Plaintiffs allege some other type of harm to their due process rights by the enactment of the Code Provision which they allege is vague. It is unclear from the Amended Complaint whether Plaintiffs raise an as-applied or a facial constitutional challenge to the Code provision. An as-applied challenge is "a claim that a statute is unconstitutional on the facts of a particular case or in its application to a particular party."). *Motor Vehicle Admin. v. Seenath*, 448

Md. 145, 181, 136 A.3d 885, 906 (2016), *citing* Black's Law Dictionary (10th ed. 2014). By contrast, a facial challenge is "[a] claim that a statute is unconstitutional on its face—that is, that it always operates unconstitutionally." *Id. citing* Black's Law Dictionary (10th ed. 2014). In other words, to be successful, a facial challenge "must establish that there is no set of circumstances under which the [statute] would be constitutional." *Harrison–Solomon v. State,* 442 Md. 254, 287, 112 A.3d 408, 428 (2015) (citation omitted). *Motor Vehicle Admin. v. Seenath*, 448 Md. 145, 181, 136 A.3d 885, 906 (2016).

Plaintiffs do not contend that they have been cited under the Code provision, and, therefore, are not able to mount an as-applied challenge. "As a general rule, the application of the void-for-vagueness doctrine is based on the application of the statute to the 'facts at hand.'" *State v. Phillips*, 210 Md. App. 239, 267, 63 A.3d 51, 68 (2013). Plaintiffs allege in the Amended Complaint that they are aware that they will violate the Code provision when it takes effect as to each of them. It follows that Plaintiffs cannot then successfully allege that they do not know if the Code provision applies to them.[4] Thus, Plaintiffs are left with a facial vagueness challenge.

Facial challenges are appropriate in two circumstances: (1) when a statute threatens to chill constitutionally protected conduct (particularly conduct protected by the First Amendment); or (2) when a plaintiff seeks pre-enforcement review of a statute because it is incapable of valid application." *Pizza di Joey, LLC v. Mayor of Baltimore*, 470 Md. 308, 362, 235 A.3d 873, 904 (2020), *citing Dias v. City & Cty. of Denver*, 567 F.3d 1169, 1179-80 (2009).

[4] "If the City ever does cite a mobile vendor for violating the 300-foot rule, that vendor will be free to assert an as-applied vagueness challenge if the vendor believes the Rule did not provide fair notice." *Pizza di Joey, LLC v. Mayor of Baltimore*, 470 Md. 308, 369, 235 A.3d 873, 908 (2020).

The void-for-vagueness doctrine "is rooted in the fourteenth amendment's guarantee of procedural due process." *Galloway v. State*, 365 Md. 599, 611 n.7, 781 A.2d 851, 858 (2001) (quoting *Williams v. State,* 329 Md. 1, 8, 616 A.2d 1275, 1278 (1992) (internal quotation marks omitted)); *see also Eanes v. State*, 318 Md. 436, 459, 569 A.2d 604, 615 (1990) (discussing how vagueness standards are "based on fourteenth amendment due process or fairness concerns"). "A law is not vague simply because it requires conformity to an imprecise normative standard." *Eanes,* 318 Md. at 459, 569 A.2d at 615. Because "[t]he root of the vagueness doctrine is a rough idea of fairness," the "touchstone" of a vagueness analysis is "whether persons of common intelligence must necessarily guess at [the law's] meaning and differ as to its application." *Id.* (*internal citations omitted*). This applies to both those who are subject to the statute and those who are charged with its enforcement.

A statute must be "sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties." *Bowers v. State*, 283 Md. 115, 120, 389 A.2d 341, 344 (1978) (internal quotation marks and citation omitted). This "fair notice principle ... is grounded on the assumption that one should be free to choose between lawful and unlawful conduct." *Id.* at 121, 389 A.2d 341, 345. A statute is void for vagueness only "if it lacks fixed enforcement standards or guidelines and thus impermissibly delegates basic policy matters to police [ ], judges, and juries for resolution on an *ad hoc* and subjective basis, with the attendant dangers of arbitrary and discriminatory application." *Eanes*, 318 Md. at 459, 569 A.2d 604 (internal quotation marks and citation omitted). *Pizza di Joey, LLC v. Mayor of Baltimore*, 470 Md. 308, 360–61, 235 A.3d 873, 903 (2020).

To prevail on a facial vagueness claim, the person challenging the statute must show that there is no set of circumstances under which the statute would be constitutional. *Pizza di Joey,*

LLC v. Mayor of Baltimore, 470 Md. 308, 365, 235 A.3d 873, 906 (2020), citing *Seenath*, 448 Md. at 181, 136 A.3d at 906; *Village of Hoffman Estates*, 455 U.S. at 494, 102 S.Ct. 1186 (challenged statute will be upheld unless it is "impermissibly vague in all of its applications"). In *Pizza di Joey, LLC, supra*, the Court of Appeals rejected a void for vagueness challenge to Baltimore City's street vending ordinance that restricts a food truck from parking within 300 feet of a brick-and-mortar restaurant that primarily sells the same type of food. The Court of Appeals stated:

> Although the Food Trucks contend that they meet this test, it is plain that they do not. Ms. McGowan herself testified that an "easy" scenario for application of the Rule would be if she parked her truck within 300 feet of Harbor Que, a brick-and-mortar barbecue restaurant. Similarly, it seems beyond dispute that Pizza di Joey would violate the Rule if Mr. Vanoni parked his truck within 300 feet of BOP or another brick-and-mortar pizzeria. Indeed, it is useful to recall that both Mr. Vanoni and Ms. McGowan walked through and surveyed specific neighborhoods in the City, and were able to identify so many specific competing restaurants in those neighborhoods that "triggered the 300-foot ban," . . . that they became convinced the Rule effectively prevented them from operating in those neighborhoods entirely.

Pizza di Joey, LLC v. Mayor of Baltimore, 470 Md. 308, 365, 235 A.3d 873, 906 (2020).

Plaintiffs contend that some of the terms of the Code provision are not defined. However a statute is not vague when the meaning of the words in controversy can be fairly ascertained by reference to judicial determinations, the common law, dictionaries, treatises or even the words themselves, if they possess a common and generally accepted meaning. See *Rose v. Locke*, 423 U.S. at 50, 96 S.Ct. at 244. ("Even trained lawyers may find it necessary to consult legal dictionaries, treatises, and judicial opinions before they may say with any certainty what some statutes may compel or forbid"); *Bowers v. State*, 283 Md. 115, 125, 389 A.2d 341, 347 (1978).

Plaintiffs contend that the following terms below are not defined. However the definition in Merriam-Webster's online dictionary immediately follows each term:[5]

> **Location** - a position or site occupied or available for occupancy or marked by some distinguishing feature.
>
> **Worship** - reverence offered a divine being or supernatural power.
>
> **Entertainment** - amusement or diversion provided especially by performers hired a band to provide entertainment b: something diverting or engaging: such as (1): a public performance
>
> **Eat** - to take in through the mouth as food: ingest, chew, and swallow in turn.
>
> **Drink** - swallow, imbibe; drink a glass of water.
>
> **Amusement park** - a commercially operated park having various devices for entertainment (such as a merry-go-round and roller coaster) and usually booths for the sale of food and drink.
>
> **Shopping** - a building or room stocked with merchandise for sale: store.
>
> **Deliberation** - the act of thinking about or discussing something and deciding carefully**:** the act of deliberating.
>
> **Transportation** - means of conveyance or travel from one place to another.

Each of the definitions is self-evident. The possible exception is a location of deliberation. A location of deliberation could be the County Council chambers or the State House of Maryland, among possible others. The Code provision is clearly written and informs a gun shop whether they must comply or not with the Bill. Plaintiffs are well aware of whether they must comply as they each assert in the Amended Complaint that the Code provision applies to each of them. The Code provision is not void for vagueness. For these reasons, the Plaintiffs

[5] https://www.merriam-webster.com/dictionary - all last accessed on March 18, 2022.

cannot adequately bring a violation of their Article 24 rights and Count IV should fail as a matter of law. In the alternative, the Court should grant summary judgment in favor of the County and declare that the Code provision is lawful and valid.

CONCLUSION

Anne Arundel County, Maryland enacted Bill No. 109-21- *Public Safety – Security Measure for the Sale of Firearms* earlier this year to address security measures related to the sale of firearms. Gun violence continues to claim victims in Anne Arundel County. The Bill proactively addresses a potential source of illegal firearms which are often utilized in shootings and other crimes of violence. The Bill is a valid local law, expressly permitted by State law. It is not in violation of the Maryland Constitution or the Express Powers Act. It is not preempted by conflict, expressly, or by implication. The Bill contains clear and unambiguous terms and is not void for vagueness. There have been no substantive or procedural due process violations. Plaintiff Maryland Shall Issue, Inc. lacks standing to bring this action. For all of these reasons, the Amended Complaint should be dismissed with prejudice, or judgment should enter as a matter of law in favor of the County.

WHEREFORE the Defendant, Anne Arundel County, Maryland respectfully requests this Court enter an Order:

A. Granting its Motion to Dismiss, or Alternatively, for Summary Judgment;

B. Dismissing the Amended Complaint with prejudice;

C. In the alternative, enter judgment in favor of Defendant Anne Arundel County as a matter of law;

D. Declaring that Bill No. 109-21 was lawfully enacted and that the Code provision it created is a valid local law, not in violation of the Express Powers Act, not preempted by State law, and not void for vagueness;

E. For such other and further relief as may be necessary to Defendant Anne Arundel County's case and as justice may so require.

Respectfully submitted,

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CERTIFICATE OF SERVICE AND COMPLIANCE

I HEREBY CERTIFY that on the 21st day of March, 2022, I electronically filed the foregoing via this Court's MDEC electronic filing system, on the parties listed below. I further certify that the foregoing contains none of the information prohibited by Md. Rule 20-201.

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