IN THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY, MARYLAND

MARYLAND SHALL ISSUE, INC., *et al.*
9613 Harford Rd., Ste C #1015
Baltimore, MD 21234
Plaintiffs,

v. **Case No. C-02-CV-22-000217**

EXPEDITED HEARING REQUESTED

ANNE ARUNDEL COUNTY, MARYLAND
44 Calvert Street
Annapolis, MD 21401
Defendant.

OPPOSITION OF PLAINTIFFS TO DEFENDANT'S MOTION TO DISMISS AND FOR SUMMARY JUDGMENT AND MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND ALTERNATIVE MOTION FOR A PRELMINARY INJUNCTION

INTRODUCTION

On January 10, 2022, the Defendant, Anne Arundel County, Maryland ("the County") signed into law Bill 109-21 ("the Bill"). Bill 109-21 becomes effective 45 days after it was enacted into law, or on February 24, 2022, and its provisions apply to firearms dealers already in existence within 180 days after the effective date of the Ordinance. A copy of Bill 109-21 was attached to the amended complaint. The plaintiffs here are four firearms dealers licensed to do business in Anne Arundel County, and Maryland Shall Issue, Inc., a Maryland, non-profit, non-partisan, 501(c)(4) Second Amendment advocacy membership organization.

On February 10, 2022, plaintiffs filed their amended complaint alleging that, through the enactment of County Bill 109-21, the County had unlawfully exceeded its powers and jurisdiction to regulate Maryland licensed firearms dealers in a way that is in direct conflict with Article XI–A, § 3 of the Maryland Constitution and in a manner that is inconsistent with multiple existing

Maryland statutes. The amended complaint further alleged that the comprehensive system of State regulation over State Licensed Firearms dealers impliedly preempt Anne Arundel County's attempt to control the operation of these dealers and that the hopelessly vague provisions of Bill 109-21 violate the Due Process Clause of Article 24 of the Maryland Declaration of Rights. Plaintiffs sought declaratory and injunctive relief on their State Constitutional and statutory law claims.

On March 21, 2022, defendant moved to dismiss or, alternatively, for summary judgment on all claims. Plaintiffs respectfully submit this Opposition to defendants' motions and this Memorandum in support of plaintiffs' cross-motion for summary judgment and alternative motion for a preliminary injunction, filed herewith. This cross-motion is supported by sworn Declarations of each of the plaintiffs attesting that the factual allegations in the amended complaint are true. Those Declarations submitted by the plaintiff dealers provide details concerning the burdens imposed by Bill 109-21 that may actually drive these dealers out of business. Those Declarations are attached to Plaintiffs' Motion for Summary Judgment and Alternative Motion for a Preliminary Injunction. For the reasons set forth below, defendant's motions should be denied. The Court should grant plaintiffs' motion for summary judgment granted or alternative motion for a preliminary injunction.

STATEMENT OF THE CASE

A. Bill 109-21.

In relevant part, Bill 109-21 amends the Anne Arundel County Code ("County Code"), to impose new regulations on Maryland licensed firearms dealers ("dealers") and gun show promoters ("promoters") in Anne Arundel County. The sole source of authority asserted by the County for this ordinance is found in MD Code, Criminal Law, § 4-209. Subsection 4-209(a) broadly and expressly

preempts localities from regulating the manufacture, repair, ownership, possession, and transportation of: (1) a handgun, rifle, or shotgun; and (2) ammunition for and components of a handgun, rifle, or shotgun. Subsection 4-209(b)(1)(iii) then provides for an exception from this broad preemption, providing that the County may regulate such firearms "within 100 yards of or in a park, church, school, public building, and other place of public assembly."

Purporting to rely on subsection 4-209(b)(1)(iii), Bill 109-21 regulates all firearms dealers located "within 100 yards of or in a park, house of worship, school, public building, or other place of public assembly." (Bill 109-21, enacting County Code Section 12-6-102). Bill 109-21 then defines a "place of public assembly" to mean "a location used for a gathering of 50 or more persons for deliberation, worship, entertainment, eating, drinking, amusement, shopping, awaiting transportation, or similar uses." (Section 12-6-101(3)). Bill 109-21 requires each dealer to submit an annual application to the County Police, providing further that dealers may not operate their businesses without prior approval of the County Police. The application submitted to the County Police must describe the "security measures" taken by the dealer and must authorize the County Police to inspect the premises of the dealer, including any off-site storage locations. (Section 12-6-104).

The security measures required by Bill 109-21 include a (1) a monitored burglar and security law system, including video surveillance, inside and outside the location, (2) physical security measures, including bollards, or other types of barriers "that prevent vehicular or other intrusion" into the building, and (3) interior or exterior security gates, screens, shutters, bars or grills over windows and doors or a secure vestibule for doors. (Section 12-6-106(a),(b). Bill 109-21 also imposes requirements applicable to when the dealer's business is closed, providing that "all firearms" at a dealer's location must be secured in a (1) a rack equipped with a locating device such as a metal bar or steel cable, (2) a heavy gauge metal cabinet equipped with an adequate locking device, (3) a safe

or vault, or (4) a glass display case in which the firearms are secured with a steel cable or other adequate locking device anchored in such a manner that it prevents the removal of the firearms from the premises. (Section 12-6-106(c)).

Bill 109-21 further requires each dealer "who transports firearms for sale" to have in its possession an inventory list for each firearm being transported and that this list must include the manufacturer, the model and serial number of each firearm. Such list must, "at all times," accompany the firearms, be available at the dealer's location and be provided to law enforcement upon request. (Section 12-6-107). The approval by the County Police of the dealer's application is not transferrable and the dealer must also notify the County Police in writing "before" any change in the dealer's location or the location of any "off-site storage." (Section 12-6-105).

Bill 109-21 also creates a new regulatory system for gun shows. The Bill bans gun shows entirely unless prior approval is first obtained from County Police through an application submitted by the gun show promoter. (Section 12-6-203). The promoter must have "security measures" in place when the show is not open to the public, and those measures must, "at a minimum," include (1) the same type of burglary and video surveillance systems required at dealer locations, (2) the same level of security measures applicable to dealer locations, and (3) "live security guard coverage." (Section 12-6-204).

A violation of these newly imposed regulatory provisions is a civil offense punishable as a Class C civil offense. Under Section 9-2-101 of the Anne Arundel County Code, a Class C civil offense is punishable with a $500 fine for the first violation and $1,000 for the second or any subsequent violation . Bill 109-21 also authorizes the County Police to post one or more police officers or security guards at the dealer's location, at the expense of the dealer, should the County Police determine, at its discretion, that a violation "may bring the security of firearms into question." The

specific provisions of Bill 109-21 are further set forth in detail in the Amended Complaint at paragraphs 5-12, and those allegations are incorporated herein by reference.

B. The Parties.

Plaintiff Maryland Shall Issue, Inc. ("MSI"), is a Section 501(c)(4), non-profit, non-partisan membership organization dedicated to the preservation and advancement of gun owners' rights in Maryland. The purposes of MSI include promoting the exercise of the right to purchase and to keep and bear arms, a right specifically protected by the Second Amendment to the United States Constitution. Amended Complaint ¶ 18. MSI alleges that the heavy costs and the penalties and conditions on dealers' operations inflicted by the Bill will likely drive dealers either out of business or require the dealers to increase the prices they must charge in order to attempt to recoup the costs imposed by the Bill, all of which interferes with the ability of MSI to promote the acquisition of firearms in Anne Arundel County by law-abiding citizens. (Id. at ¶ 19). MSI asserts standing to sue on its own behalf as it is aggrieved in ways that are different in character and kind from that suffered by the general public. (Id. at ¶ 20).

The remaining four named plaintiffs, FIELD TRADERS, LLC, CINDY'S HOT SHOTS, INC., PASADENA ARMS, LLC, and WORTH-A-SHOT, INC., are all State and federally licensed firearms dealers in Anne Arundel County (collectively "plaintiff dealers"). Amended Complaint ¶¶ 21-24. Each of these dealers alleges that it regularly sells firearms, including regulated firearms as well as ammunition for firearms in the County. Each alleges that it is "arguably" within 100 yards of a place of public assembly, as that term is defined in Bill 109-21. Each alleges that it "is adversely affected by Bill 109-21 as it would impose substantial costs on doing business at its location in Anne Arundel County and thereby threaten its ability to stay in business or stay competitive with dealers located outside Anne Arundel County" with whom the dealer competes. Each of the plaintiff dealers

alleges that it "will be forced to expend thousands of dollars to comply with Bill 109-21 and may be unable to recoup those costs in the course of operating business in the otherwise highly competitive market for the sale of firearms and ammunition among dealers in Maryland." (Id. at ¶ 33).

In addition, each of the plaintiff dealers alleges that it "cannot be sure whether Anne Arundel law enforcement officials will deem that its business location falls within the expanded 100-yard radius of regulation enacted by Bill 109-21" and that the Bill "is susceptible to irrational and selective patterns of enforcement by County law enforcement officials." (Id. at ¶ 45). Each of the plaintiffs, including MSI on behalf of its members, allege that they "are hindered or chilled in their right to live or work in Anne Arundel County or purchase firearms and/or ammunition in Anne Arundel County by the threat of arbitrary or discriminatory enforcement of the unconstitutionally vague provisions of Bill 109-21." (Id.). Each plaintiff dealer alleges that it is a member of MSI. (Id. at ¶ 29).

Each of the plaintiff dealers have submitted a sworn Declaration in support of plaintiffs' motions and in opposition to defendant's motion. Each Declaration verifies that the factual allegations of the Amended Complaint are true. Each Declaration provide additional details concerning the expenses each dealer would have to incur in order to comply with Bill 109-21. For example, first year compliance with Bill 109-21 alone would cost CINDY'S HOT SHOTS approximately $48,000. Declaration of William Quick, ¶ 4. That number for FIELD TRADERS is $50,000. Declaration of Micah Schaefer, ¶ 4. See also Declaration of John Walker ¶¶ 4,5 (estimated first year cost for PASADENA ARMS would be $26,562.00 for a business that only sells 20 firearms a year and only does 137 transfers a year); Declaration of Donna Worthy (estimated first year cost of compliance for WORTH-A-SHOT would be $44,300). Every dealer states those expenses are so extreme that the cost of compliance could drive the dealer out of business by making it difficult to compete with dealers located outside of Anne Arundel County. (Id. at ¶¶ 5,6).

All four of the plaintiff dealers are lessees at their locations and thus do not own the property on which their businesses are located. (Declarations at ¶3). These dealers would have to secure the permission of their landlords in order to comply with the exterior security measures required by Bill 109-21, and thus may not be able to comply at all, regardless of cost. Indeed, the landlord of WORTH-A-SHOT has already refused to consent to the exterior barriers that Bill 109-21 requires, and thus WORTH-A-SHOT will be forced to close, as compliance with Bill 109-21 is impossible at that location. See Declaration of Donna Worthy, ¶ 4.

The defendant is Anne Arundel County, Maryland. The Amended Complaint alleges that Anne Arundel County is a chartered home rule county within the meaning of Article XI-A of the Maryland Constitution and may be named and sued *eo nomine* under Maryland law for declaratory and injunctive relief. (Id. at ¶ 26).

C. The Claims.

Plaintiffs allege that Bill 109-21 (1) is not a local law within the meaning of Article XI–A, § 3 of the Maryland Constitution and is thus *ultra vires,* as alleged in Count I of the Amended Complaint; (2) violates the Express Powers Act, MD Code, Local Government, § 10-206, in that it is inconsistent with and/or preempted by Maryland general law, as alleged in Count II; (3) is impliedly preempted by a comprehensive system of regulation enacted by the General Assembly for the regulation of dealers, as implemented through regulations promulgated by the Maryland State Police, as alleged in Count III; and (4) is so vague that it violates Article 24 of the Maryland Declaration of Rights, as alleged in Count IV. The Amended Complaint seeks declaratory relief as well as preliminary and permanent injunctive relief on each Count and "such other and further relief as in law and justice" plaintiffs "may be entitled to receive." See Id., Prayer for Relief.

ARGUMENT

I. STANDARD OF REVIEW.

On a motion to dismiss, the court is to "assume the truth of all relevant and material well-pleaded facts, as well as all the inferences, favorable to [plaintiff], that may reasonably be drawn from those pleadings." *Bell Atlantic-Maryland, Inc. v. Maryland Stadium Authority*, 113 Md.App. 640, 645 688 A.2d 545 (1997). See also *Ceccone v. Carroll Home Services, LLC*, 454 Md. 680, 691, 165 A.3d 475 (2017) ("When deciding whether to grant a motion to dismiss a complaint as a matter of law, a trial court is to assume the truth of factual allegations made in the complaint and draw all reasonable inferences from those allegations in favor of the plaintiff."). With respect to motions for summary judgment, Rule 2-501(f) provides that a trial court "shall enter judgment in favor of or against the moving party if the motion and response show that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law." See *Reiter v. Pneumo Abex, LLC*, 417 Md. 57, 67, 8 A.3d 725 (2010). On such a motion for summary judgment, the court "must make the threshold determination as to whether a genuine dispute of material fact exists" and "construe the facts properly before the court, and any reasonable inferences that may be drawn from them, in the light most favorable to the non-moving party." *Jurgensen v. New Phoenix Atlantic Condominium Council of Unit Owners,* 380 Md. 106, 114, 843 A.2d 865 (2004).

The purpose of Maryland's Declaratory Judgment Act is "to settle and afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations." MD Code, Courts and Judicial Proceedings, § 3-402. As a general rule, a declaratory judgment is mandatory, when otherwise properly requested. See, e.g., *Post v. Bregman*, 349 Md. 142, 159-60, 707 A.2d 806 (1998) ("when an action for declaratory judgment does clearly lie, as it did in this case, it is

ordinarily not permissible for a court to avoid declaring the rights of the parties by entering judgment on another pending count" and "[t]he existence of another remedy, at law or in equity, does not ordinarily defeat a party's right to seek and obtain a declaratory judgment"); *Christ by Christ v. Md. Dept. of Nat. Res.,* 335 Md. 427, 435, 644 A.2d 34 (1994) ("Where a controversy is appropriate for resolution by declaratory judgment, however, the trial court must render a declaratory judgment.").

The rule in Maryland, as elsewhere, the appropriateness of granting an interlocutory injunction is determined by examining four factors: (1) the likelihood that the plaintiff will succeed on the merits; (2) the "balance of convenience" as determined by whether greater injury would be done to the defendant by granting the injunction than would result from its refusal; (3) whether the plaintiff will suffer irreparable injury unless the injunction is granted; and (4) the public interest. *State Dep't v. Baltimore County,* 281 Md. 548, 554–57, 383 A.2d 51 (1977). See also *Ehrlich v. Perez,* 394 Md. 691, 708 (2006).

II. PLAINTIFFS HAVE STANDING.

To have standing to seek declaratory relief under MD Code, Courts and Judicial Proceedings, § 3-409(a), a plaintiff need only allege that he or she has suffered "some kind of special damage from such wrong differing in character and kind from that suffered by the general public." *Voters Organized for the Integrity of City Elections v. Baltimore City Elections Bd*., 451 Md. 377, 396, 152 A.3d 827 (2017). A declaratory judgment is appropriate if even "one plaintiff" has standing. (451 Md. at 398). Pre-enforcement review is fully available under this test. *Pizza di Joey, LLC v. Mayor of Baltimore*, 470 Md. 308, 343-44, 235 A.3d 873 (2020) (collecting cases). The authority on which the County relies is not to the contrary.

Defendant does not challenge the standing of the plaintiff dealers. The County does not dispute that each of these plaintiff dealers is a State and Federally licensed firearms dealer located in Anne Arundel County and is thus directly regulated by Bill 109-21. Defendant does not dispute any of the allegations of harm that these dealers suffer as a result of Bill 109-21. Each of the plaintiff dealers allege their business location is arguably within the scope of those locations newly regulated by Bill 109-21. These allegations are supported by sworn Declarations attached to plaintiffs' cross-motion for summary judgment and alternative motion for a preliminary injunction, filed herewith. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561-62 (1992) (Where "the plaintiff is himself an object of the action ... there is ordinarily little question that the action or inaction has caused him injury.").

Defendant does attack the standing of Maryland Shall Issue, Inc. ("MSI"), alleging that standing is lacking because MSI does not "sell guns" in the County. (D.Mem. at 8). Standing, however, is not so limited. In allegations defendant ignores, MSI alleges that Bill 109-21 "burdens the ability of MSI to carry out its mission of promoting the acquisition of firearms for lawful purposes, as guaranteed by the Second Amendment of the United States Constitution, as the heavy costs and the penalties and conditions on dealers' operations inflicted by the Bill will likely drive dealers either out of business or require the dealers to increase the prices they must charge in order to attempt to recoup the costs imposed by the Bill, all of which interferes with the ability of MSI to promote the acquisition of firearms in Anne Arundel County by law-abiding citizens." (Amended Complaint ¶ 19). There should be no doubt that there is a Second Amendment right to acquire firearms. *Teixeira v. City of Alameda*, 873 F.3d 670, 677 (9th Cir. 2017) (en banc), *cert. denied*, 138 S.Ct. 1988 (2018) ("the core Second Amendment right to keep and bear arms for self-defense 'wouldn't mean much' without the ability to acquire arms"). This Second Amendment

right to acquire includes the corresponding, ancillary right of firearms dealers to sell firearms. *Teixeira*, 873 F.3d at 682 ("[c]ommerce in firearms is a necessary prerequisite to keeping and possessing arms for self-defense").

MSI also alleges that "[w]ithout a robust network of firearms dealers it will be legally difficult if not practicably impossible for the average, law-abiding citizen to acquire firearms in Anne Arundel County." (Id.). That is because, as a matter of federal law, the acquisition of firearms generally takes place through dealers. See, e.g., 18 U.S.C. § 922(a)(3),(5), § 922(b)(3). Indeed, Maryland law provides that a private sale of a long gun to non-family members can **only** be accomplished through a federal NICS background check as facilitated by a Federally licensed dealer, such as the plaintiff dealers. MD Code, Public Safety, § 5-204.1. This sort of harm to MSI is "different" than to "general public" as MSI has "a more specialized interest" in protecting the rights of dealers and their customers than does the general public. *Fraternal Order of Police v. Montgomery Cty*., 446 Md. 490, 506-07, 132 A.3d 311 (2016) (holding that a police union had standing to challenge the County's use of public funds to defeat a referendum concerning statute on collective bargaining because statute affected the scope of bargaining by the union on behalf of its members). See also *Teachers Union v. Board of Education*, 379 Md. 192, 840 A.2d 728 (2004) and *Patterson Park v. Teachers Union*, 399 Md. 174, 923 A.2d 60 (2007). The County has not disputed these verified allegations,[1] which must therefore be taken as true for the purpose of ruling on defendant's motion to dismiss.

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[1] See Declaration of Daniel Carlin-Weber, on behalf of MSI.

But this Court need not address MSI's standing, as at least "one" of the other plaintiffs has standing to seek declaratory and injunctive relief, and all it takes is "one" plaintiff with standing in order to reach the merits of each claim. *Voters Organized for the Integrity of City Elections*, 451 Md. at 398. The rule in the federal courts is the same. For example, in *Maryland Shall Issue, Inc. v. Hogan*, 971 F.3d 199 (4th Cir. 2020), the Fourth Circuit relied on well-established case law to hold that the federal and State licensed firearms dealer plaintiff in that case, Atlantic Guns, had Article III standing to sue on its own behalf **and** had third-party standing to sue on behalf of customers and "other similarly situated persons" in a constitutional challenge to MD Code, Public Safety, § 5-117.1. (971 F.3d at 216). The Fourth Circuit concluded that it was therefore unnecessary to reach the standing of other plaintiffs, including that of MSI. (971 F.3d at 214 & n.5).

Plaintiff dealers are likewise federal and State licensed firearms dealers and have the same standing here as Atlantic Guns had in *MSI*. See, e.g., *Saint Luke Institute, Inc. v. Jones*, 471 Md. 312, 350, 241 A.3d 886 (2020) (relying on federal standing law in holding plaintiff had third party standing). See also *Teixeira v. County of Alameda*, 873 F.3d 670, 678 (9th Cir. 2017) (en banc), *cert. denied*, 138 S.Ct. 1988 (2018) ("Teixeira, as the would-be operator of a gun store, thus has derivative standing to assert the subsidiary right to acquire arms on behalf of his customers"). The County's motion to dismiss should thus be denied as it is simply unnecessary to reach the standing of MSI where the dealers have standing to sue on behalf of themselves and their customers, including MSI members. Defendant's motion to dismiss should be denied.

III. BILL 109-21 IS NOT A "LOCAL LAW."

Count I of the Amended Complaint alleges that Bill 109-21 is *ultra vires* as it is not a "local law" within the meaning of within the meaning of Article XI, § 3 of the Maryland Constitution.

Amended Complaint ¶¶ 26-29. An ordinance enacted by a county is not a "local law" if "deals with the general public welfare, a subject which is of significant interest not just to any one county, but rather to more than one geographical subdivision, or even to the entire state." *Steimel v. Board*, 278 Md. 1, 5, 357 A.2d 386 (1976). Thus, "some statutes, local in form, have been held to be general laws, since they affect the interest of the whole state." *Cole v. Secretary of State*, 249 Md. 425, 434, 240 A.2d 272 (1968). See also *Gaither v. Jackson*, 147 Md. 655, 664–65, 128 A. 769, 772–73 (1925) ("a law is not necessarily a local law merely because its operation is confined ... to a single county, if it affects the interests of the whole state").

Cole expressly endorsed *Norris v. Mayor & City Council of Baltimore*, 172 Md. 667, 192 A. 531, 538 (1937); *Bradshaw v. Lankford*, 73 Md. 428, 21 A. 66 (1891); *Gaither v. Jackson*, 147 Md. 655, 128 A. 769 (1925); and *Dasch v. Jackson*, 170 Md. 251, 183 A. 534 (1936). In each of those cases, the Court of Appeals struck down an ordinance because it was not a "local law." *Cole* explained that the controlling "rationale" of these cases was "that while the immediate objective sought to be achieved was local in character, the statutes *indirectly affected* matters of significant interest to the entire state." *Cole*, 249 Md. at 434-35 (emphasis added). *Cole* and *Steimel* were both cited in the amended complaint (¶ 16), yet defendant does not cite either case and ignores the standard established by those decisions. The County thus effectively concedes that Bill 109-21 "indirectly affect[s] matters of significant interest to the entire state" under *Cole* or "deals with the general public welfare, a subject which is of significant interest not just to any one county, but rather to more than one geographical subdivision, or even to the entire state" under *Steimel*.

The Amended Complaint (¶28), alleges, and the County does not dispute, that the General Assembly has considered and rejected legislation that would have regulated dealers in a manner similar to that imposed by Bill 109-21. In 2020, those bills were Senate Bill 816,

https://bit.ly/36hKYSk, and House Bill 1257, https://bit.ly/3ufVim1. Both bills drew heavy State-wide opposition and neither bill emerged from committee. Educated by that prior effort, the General Assembly has now passed less draconian measures this Session.[2] Specifically, the General Assembly has now passed and sent the Governor House Bill 1021. The bill was amended and passed by the full House of Delegates on March 21, 2022. https://bit.ly/3D5N6Ja On March 30, 2022, the Senate Judicial Proceedings Committee issued a favorable report on the bill and, on March 31, 2022, HB 1021 was passed by the full Senate without amendment. (Id.). The HB 1021 now goes to the Governor who has six days (not counting Sunday) to veto, sign or allow the Bill to become law. MD Constitution, Art. II, Sec. 17. This Court may take judicial notice of these legislative developments. *Abrishamian v. Washington Medical Group, P.C.,* 216 Md.App. 386, 413, 86 A.3d 681 (2014) ("Trial courts can take judicial notice of 'matters of common knowledge or [those] capable of certain verification.'") (quoting *Faya v. Almaraz*, 329 Md. 435, 444, 620 A.2d 327 (1993)). Plaintiffs specifically request such judicial notice here.

House Bill 1021 imposes requirements that are substantially different and much less stringent than those imposed by Bill 109-21. For example, Bill 109-21 expressly requires "exterior bollards, concrete barriers, steel barricades, planters, landscape boulders, or other physical

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[2] As noted in the Amended Complaint (¶28), now pending in the General Assembly is SB773, which (post-Amended Complaint) was amended and received a favorable vote in the Senate Judicial Proceedings Committee on March 23, 2022, and passed the full Senate on March 29, 2022. https://bit.ly/3IvArjF. As amended by the sponsor in Committee, the bill's requirement that firearms dealers store regulated firearms in a secure vault during non-business hours was struck and the bill was amended to provide for a tax credit for the purchase of firearm safety devices. As thus amended, the bill received the unanimous support of the Committee and was unanimously passed by the Senate. (Id.).

barriers." Section 12-6-106(b)(1). In contrast, HB 1021, as enacted by the House and Senate, requires such exterior barriers only "if practicable." Section 1, amending MD Code, Public Safety, § 5-145.1(a)(iv). That difference allows a dealer, such as plaintiff dealers, each of whom rent their locations and thus have no legal right or ability to control exterior modifications,[3] to remain in business if the landlord does not agree to such barriers. The "if practical" qualifier for exterior barriers in HB 1021 thus could make the difference between staying open or being forced to close. Bill 109-21 contains no such accommodation to such business realities.

HB 1021 also creates options for the dealer not found in Bill 109-21. For example, the dealer may elect to meet the requirements of subsection 5-145.1(a)(**1**) (specifying (a) video surveillance, (b) "at least one" (but not all) of the listed exterior security measures, and (c) exterior physical barriers ("if practicable"), "**or**" the dealer may elect to utilize the options specified in subsection 5-145.1(a)(**2**) (specifying that, during non-business hours, the dealer lock firearms in a "vault," "a safe" "**or**" a "room or building that meets the requirements under item (1) of this subsection." Either method of securing firearms is acceptable**.** In contrast, Bill 109-21 affords no such choice as it requires a monitored burglar alarm, the video surveillance system and the interior and exterior physical security measures at all times **and** requires that the firearms be stored during non-business hours with **additional** specified measures. See Section 12-6-106(a)-(c). In short, HB 1021 allows the dealer the option of forgoing special nightly storage measures while Bill 109-21 mandates it. Such storage can be very costly to a small business. See, e.g., Declaration of Micah

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[3] See Declaration of John Walker, of PASADENA ARMS; Declaration of Micah Schaefer of FIELD TRADERS, ¶ 4; Declaration of William Quick, of CINDY'S HOT SHOTS, ¶ 4; Declaration of Donna Worthy of WORTH-A-SHOT, ¶ 4.

Schaefer, ¶ 4 (estimating that the nightly storage requirement of Bill 109-21 would cost FIELD TRADERS an estimated $15,600 a year); Declaration of William Quick ¶ 4 (estimating that the storage requirement will cost CINDY'S HOT SHOTS approximately $18,000 a year); Declaration of Donna Worthy, ¶ 4 (estimating that the storage requirement will cost WORTH-A-SHOT around $9,300 a year).

There are other differences as well. Bill 109-21 provides that a dealer must notify the police prior to moving the location of any store or off-site storage and further requires that dealers who transport firearms have in their possession "at all times" an inventory list which must also be available at the dealer's business location and made available to County law enforcement upon demand. Section 12-6-107. HB 1021 contains no such requirements. Bill 109-21 requires an application by the dealer and prior police approval of the security system before conducting business. Sections 12-6-202 & 12-6-203. No such prior approval process is required by HB 1021.

There are also stark differences in the enforcement mechanisms. Bill 109-21 allows the County to post a police officer outside the business at the dealer's location (at the dealer's expense) for the first infraction and allows the imposition of a civil penalty on top of that remedy. Section 12-6-301. Bill 109-21 also provides that the Police Department "may enforce the provisions of this title through injunctive proceedings, an action for specific performance, or any other appropriate proceedings." Section 12-6-301(b). In contrast, HB 1021 imposes a civil fine for the first violation and a possible license suspension for the second violation and a possible revocation for the third violation

HB 1021provides that the suspension or revocation remedies are available only for a violation that is committed "knowingly and willfully." Section 5-145.1(b). Bill 109-21 contains no such *mens rea* requirement and thus allows the County to impose the fully panoply of legal

sanctions for mistakes or inadvertent violations. HB 1021 is enforced by the Maryland State Police pursuant to State-wide regulations to be promulgated by the State Police. Section 5-145.1(c). Bill 109-21 is enforced on an *ad hoc* basis "to the satisfaction of the Police Department," with no regulations to provide guidance or certainty, thereby accenting the possibility of arbitrary or discriminatory enforcement. Section 12-6-301(a)(1). The County has no experience in regulating dealers while the State Police have long been assigned that task by State law, MD Code, Public Safety, §§ 5-105, 5-106. Plainly, the County's regulatory scheme for dealers is incompatible with HB 1021.

Whether or not HB 1021 ultimately becomes law, these legislative efforts demonstrate that the imposition of security requirements on firearms dealers are matters that, at the least, "indirectly affect[s] matters of significant interest to the entire state," *Cole*, 249 Md. at 434-35, or "deals with the general public welfare, a subject which is of significant interest not just to any one county, but rather to more than one geographical subdivision, or even to the entire state," *Steimel*, 278 Md. at 5. Counties in Maryland are not little fiefdoms, to be ruled by lords in county governments without regard to the intrastate and interstate commerce that runs through all of Maryland counties. See *Dasch v. Jackson*, 170 Md. 251, 261, 183 A. 534, 538 (1936) ("[a] law may be local in the sense that it operates only within a limited area, but general in so far as it affects profession, or other calling within the area."). If HB 1021 becomes law (as expected), Bill 109-21 will also be preempted by the Express Powers Act because its requirements are manifestly "inconsistent" with those of HB 1021. See Part IV, *infra.*

What happens to dealers in Anne Arundel County also affects the Second Amendment rights of persons from across Maryland and elsewhere to purchase firearms and ammunition from County dealers. The Amended Complaint specifically alleges (and the plaintiff dealers'

Declarations confirm) that Bill 109-21 "will likely drive dealers either out of business or require the dealers to increase the prices they must charge in order to attempt to recoup the costs imposed by the Bill" (¶19). That reality affects not just the dealers, but impacts everyone who does business at these locations, including customers, suppliers and employees. The County has made no attempt to dispute these verified allegations and thus they must be taken as true for purposes of ruling on the County's motion for summary judgment. See Maryland Rule 2-501; *Garrison v. Shoppers Food Warehouse*, 82 Md.App. 351, 357, 571 A.2d 878 (1990) ("a motion for judgment must be denied if a plaintiff produces 'any evidence, however slight, legally sufficient as tending to prove' his or her case, the weight and value of that evidence being left to the jury") (quoting *Fowler v. Smith*, 240 Md. 240, 246, 213 A.2d 549 (1965)).

IV. BILL 109-21 VIOLATES THE EXPRESS POWERS ACT.

A. Bill 109-21 Is Preempted by Section 4-209(a) As It Exceeds the Scope of Local Regulatory Power Allowed By Section 4-209(b).

Under the Express Powers Act, MD Code, Local Government, § 10-206, Montgomery County laws must be "not inconsistent with State law," and the County is barred from enacting laws that are "preempted by or in conflict with public general law." A county runs afoul of the Express Powers Act when it "prohibits an activity which is permitted by State law." *City of Baltimore v. Sitnick*, 254 Md. 303, 317, 255 A.2d 376, 382 (1969). The County does not deny that it is bound by the Express Powers Act, but asserts that Bill 109-21 is authorized by MD Code, Criminal Law, 4-209(b)(1), and that the County is thus compliant with the Express Powers Act. (D.Mem. at 10, 12-13). Section 4-209(b)(1) is thus the linchpin of the County's defense. As explained below, the County's reliance on that subsection is badly misplaced as the text of Section

4-209(b)(1) and basic rules of statutory construction make plain that Section 4-209(b)(1) does not authorize the County to enact Bill 109-21.

Section 4-209(a) first establishes a broad preemption of county regulation, providing that "[e]xcept as otherwise provided in this section, the State preempts the right of a county, municipal corporation, or special taxing district to regulate the purchase, sale, taxation, transfer, manufacture, repair, ownership, possession, and transportation of: (1) a handgun, rifle, or shotgun; and (2) ammunition for and components of a handgun, rifle, or shotgun." Subsection 4-209(b) then details the limited exceptions, including an exception in subsection 4-209(b)(1)(iii) that allows counties to regulate "within 100 yards of or in a park, church, school, public building, and other place of public assembly." That subsection does not bear the weight of the County's reliance.

The general rule is that exceptions to a broad statutory prohibition are to be narrowly construed so as to avoid negating the very prohibition to which the provision is an exception. See, e.g., *Blue v. Prince George's County*, 434 Md. 681 76 A.3d 1129 (2013) ("Under the canons of statutory construction, '[w]hen a general provision in a statute has certain limited exceptions, all doubts should be resolved in favor of the general provision rather than the exceptions.'") (quoting Norman J. Singer and J.D. Shambie, *Sutherland Statutes and Statutory Construction* (2013), § 47:11); *Taylor v. Friedman*, 344 Md. 572, 581, 689 A.2d 59 (1997) (noting "the rule of statutory construction dealing with statutes that express a general rule, followed by one or more specific exceptions to the general rule. Under those circumstances, a court ordinarily cannot add to the list of exceptions."); *Radio Communications, Inc. v. Public Service Commission of Maryland*, 50 Md.App. 422, 442, 441 A.2d 346 (1982) ("'Grandfather rights' are considered exceptions to statutes and must be strictly and narrowly construed.").

This principle fully applies to the exceptions set out in subsection 4-209(b). The federal district court so held in *Mora v. City of Gaithersburg,* 462 F.Supp.2d 675, 689 (D.Md. 2006), *modified on other grounds*, 519 F.3d 216 (4th Cir. 2008). *Mora* ruled that "the Legislature" has "occup[ied] virtually the entire field of weapons and ammunition regulation," holding further there can be no doubt that "the exceptions [in Section 4-209(b)] to otherwise blanket preemption [in Section 4-209(a)] are narrow and strictly construable." (Id.). Not surprisingly, the County never cites *Mora*. We have found no case, other than *Mora*, that construes Section 4-209 and the County has cited none. This Court should follow *Mora* and strictly construe Section 4-209(b)(1). As detailed below, Bill 109-21 expands the scope of the subsection 4-209(b)(1)(iii) exception and thus violates this basic rule that exceptions should be narrowly construed, not expanded.

Bill 109-21 goes far beyond what is authorized by Section 4-209(b). The controlling aspect of the Section 4-209(b)(1)(iii) exceptions is that the County's authority to regulate is restricted to "**within 100 yards of or in a park, church, school, public building, and other place of public assembly**." (Emphasis added). Bill 4-21 flouts that restriction and effectively amends Section 4-209(b)(1)(iii) by broadly defining "place of public assembly" to mean "A LOCATION USED FOR A GATHERING OF 50 OR MORE PERSONS FOR DELIBERATION, WORSHIP, ENTERTAINMENT, EATING, DRINKING, AMUSEMENT, SHOPPING, AWAITING TRANSPORTATION, OR SIMILAR USES." Section 12-6-101(3).

Stated simply, the County is not at liberty to expand and add to the list of exceptions set out in Section 4-209(b)(1)(iii), much less do so through the artifice of broadly defining the meaning of these statutory terms. The list of locations in Bill 109-21 is indisputably different and larger than that set forth in Section 4-209(b)(1)(iii). Neither this Court nor the County has authority to enlarge that list. See, e.g., *McNeil v. State*, 112 Md.App. 434, 451, 685 A.2d 839 (1996) ("the rules

of statutory interpretation do not permit us 'under the guise of construction, to supply omissions or remedy possible defects in the statute, or to insert exceptions not made by the Legislature'") (quoting *Amalgamated Cas. Ins. Co. v. Helms,* 239 Md. 529, 535–36, 212 A.2d 311 (1965); *Dutta v. State Farm Insurance Co*., 363 Md. 540, 553, 769 A.2d 948 (2001) ("The rules of statutory construction relating to statutory provisions that create exceptions or exemptions from other statutory provisions reinforces our view that no other exceptions were intended."). The County is restricted to what the legislature has authorized.

The term "other place of public assembly" is also limited by the general rule of construction that "'when general words in a statute follow the designation of particular things or classes of subjects or persons, the general words will usually be construed to include only those things or persons of the same class or general nature as those specifically mentioned.'" *In re Wallace W.*, 333 Md. 186, 190, 634 A.2d 53 (1993) (quoting *Giant of Md. v. State's Attorney,* 274 Md. 158, 167, 334 A.2d 107 (1975). This is an application of the *ejusdem generis* canon of construction, which is based on "the supposition that if the legislature had intended the general words to be construed in an unrestricted sense, it would not have enumerated the specific things." *State v. 158 Gaming Devices,* 304 Md. 404, 429 n.12, 499 A.2d 940 (1985). See also *State v. Sinclair,* 274 Md. 646, 650, 659, 337 A.2d 703 (1975). The canon of *ejusdem generis* "limits general terms [that] follow specific ones to matters similar to those specified." *CSX Transp., Inc. v. Alabama Dept. of Revenue*, 562 U.S. 277, 294 (2011). See also *Welsh v. Boy Scouts of America*, 993 F.2d 1267, 1269 (7th Cir.), *cert. denied*, 510 U.S. 1012 (1993) ("The statute in listing several specific physical facilities, sheds light on the meaning of 'other place of exhibition or entertainment.'").

By using the term "and other place of public assembly," Section 4-209(b)(1)(iii) was obviously intended to include "other" places which are akin or similar to the places expressly

mentioned in the same statutory sentence, *viz*., a public "park," a "church," a "school" or a "public building." Dealerships are private businesses located on private property and are not remotely similar to any of these public places. In contrast, the places specified in Section 4-209(b)(1)(iii) are locations where the public "assembles" for a particular purpose or objective. Normal usage of the term "place of public assembly" does not include wherever disparate members of the public might happen to form a crowd during their individualized outings. See *Freeman v. Quicken Loans, Inc*., 566 U.S. 624, 634 (2012) ("it is normal usage that, in the absence of contrary indication, governs our interpretation of texts"); *Lockett v. Blue Ocean Bristol, LLC*, 446 Md. 397, 421, 132 A.3d 257 (2016) ("To construe a statute, we typically 'begin with the normal, plain meaning of the language of the statute.'") (citation omitted).

The dictionary confirms this point. The term "assembly" is used to describe "[a] group of persons who are *united* and who meet *for some common purpose*." Black's Law Dictionary (11th ed. 2019) (emphasis added). Section 209(b)(iii) further modifies "assembly" with the adjective "public." As an adjective, "public" is defined to mean "[o]pen or available for all to use, share, or enjoy." (Id.). Courts "neither add nor delete words to a clear and unambiguous statute to give it a meaning not reflected by the words that the General Assembly used or *engage in forced or subtle interpretation in an attempt to extend or limit the statute's meaning." Bellard v. State*, 452 Md. 467, 481, 157 A.3d 272 (2017) (emphasis added). "Common sense must guide us in our interpretation of statutes, and 'we seek to avoid constructions that are illogical, unreasonable, or inconsistent with common sense.'" *Marriott Employees Federal Credit Union v. Motor Vehicle Administration*, 346 Md. 437, 445, 697 A.2d 455 (1997) (quoting *Frost v. State*, 336 Md. 125, 137, 647 A.2d 106 (1994). People normally do not "publically assemble" at a private business,

particularly at a firearms dealership. Customers at a business are not normally "united" by a "common purpose." Customers are there for their own, disparate purposes.

In normal usage, a person cannot be said to "publically assemble" in order to eat, or drink or "deliberate" or go "shopping" or "await transportation." Such individuals are not "united" for some "common purpose" for such activities. If the General Assembly had wished to extend the limited exception set out Section 4-209(b)(1)(iii) to include such activities, it easily could have done so. After all, the principal purpose of Section 4-209 is to broadly **preempt** County regulation. Nothing in 4-209(b)(1)(iii) allows a county to define those exceptions any way it wants so as to evade that preemption and thus "to swallow the rule." See *Giant of Maryland, Inc. v. State's Attorney for Prince George's County*, 267 Md. 501, 516, n.5, 298 A.2d 427 (1973) (rejecting a "definition [that] would . . . allow the exception to swallow the rule"); *Dutta*, 363 Md. at 553. Other than offering a bare assertion that Bill 109-21 "fits squarely" within Section 4-209(b)(1)(iii) (D.Mem. at 12), the County never even attempts to reconcile the County's definition of "place of public assembly" with the actual language used by Section 4-209(b)(1)(iii) or with these basic principles of statutory construction.

B. Bill 109-21 Is Expressly Preempted By Other Maryland Statutes.

In addition to conflicting with Section 4-209(a), Bill 109-21 also conflicts with no fewer than **five other** express firearms preemption statutes, one of which was enacted into law as recently as March of 2021 by the Maryland General Assembly. See MD Code, Public Safety, § 5-207(a) (enacted in 2021 and expressly preempting a County from regulating "the transfer of a rifle or shotgun"); MD Code, Public Safety, § 5-133(a) (amended in 2003 and expressly preempting a County from regulating "the possession of a regulated firearm"); MD Code, Public Safety, § 5-134(a) (amended in 2003 and expressly preempting a County from regulating "the transfer of a

regulated firearm"); MD Code, Public Safety, § 5-104 (amended in 2003 and expressly preempting a County from regulating the "sale of a regulated firearm"); 1972 Session Laws of Maryland, Ch. 13, § 6 (expressly preempting "the right of political subdivisions" to regulate "the wearing, carrying, or transporting of handguns"). This last provision, enacted in 1972, was construed in *Montgomery County v. Atlantic Guns, Inc.,* 302 Md. 540, 489 A.2d 1114 (1985), to preempt a county attempt to regulate the sale of ammunition as well as firearms.

Stated simply, Bill 109-21 directly regulates dealers who sell firearms by conditioning the right of these dealers to operate or to do business in the County upon County Police prior approval of an application that demonstrates that the dealer has complied with the security requirements imposed by Bill 109-21. Sections 12-6-103, 12-6-104. The Bill's enforcement provisions allow the County to effectively shut down any "application" to operate these businesses. Section 12-6-301. Such an ordinance necessarily regulates the "transfer" of firearms, the "sale" of firearms and the "possession" of firearms, as a non-compliant dealer may not engage in any of these activities, even though the dealer may otherwise be fully licensed to do so by the State Police under subtitle 1 of Title 5 of the Public Safety Article.

Indeed, the Bill's regulation of dealers is especially incompatible with MD Code, Public Safety, § 5-104, which was amended in 2003. Section 5-104 provides that *"[t]his* ***subtitle*** supersedes *any restriction* that a local jurisdiction in the State imposes *on a sale of a regulated firearm*, and the State preempts the right of any local jurisdiction *to regulate the sale* of a regulated firearm." (Emphasis added). This preemption provision thus incorporates the **entirety** of subtitle 1, of Article 5, which is devoted to the regulation of **firearm dealers**. See MD Code, Public Safety, § 5-106 (requiring a dealer's license issued by the State Police before a person may engage "in the business of selling, renting, or transferring regulated firearms"); MD Code, Public Safety, § 5-107

(specifying the contents of an application for a dealer's license); MD Code, Public Safety, § 5-108 (requiring a background check for a dealer's license); MD Code, Public Safety, § 5-109 (requiring an investigation to determine the truth or falsity of the information supplied and the statements made in an application for a dealer's license); MD Code, Public Safety, § 5-111 (establishing the terms of a dealer's license).[4]

Under Section 5-104, any County law that interferes with any of these provisions are preempted. Here, Bill 109-21 does precisely that as it allows the County effectively to negate the State-granted dealer's license to operate by conditioning that operation on compliance with the requirements imposed by Bill 109-21, including an application and approval process not found in subtitle 1 of Article 5. The Bill then enforces compliance by allowing the County to shut down a dealer (or refuse to renew the annual license required by the Bill) who has been licensed to operate and sell regulated firearms by the State Police under subtitle 1 of Article 5. Section 5-104 precludes such local regulation.

The proper approach is to reconcile the Section 4-209(b)(1) exceptions with Section 5-104 and these other preemption provisions. See *Maryland-National Capital Park & Planning Comm'n v. Anderson*, 395 Md. 172, 183, 909 A.2d 694 (2006). Such reconciliation is easily achieved here by flatly precluding the County from regulating dealers. That allows the County to regulate the locations actually specified in subsection 4-209(b)(1)(iii) while according State law and regulations exclusive control over the operation of firearms dealers. See Part V, *infra.* That result

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[4] Dealers were further extensively regulated State-wide in 2013 with the enactment of the Firearms Safety Act of 2013, 2013 Session Laws Ch. 427 (amending MD Code, Public Safety, §§ 5-110, 5-114, 5-115, 5-146).

is consistent with the federal district court's holding in *Mora*, which ruled that the Section 4-209(b) exceptions are to be narrowly construed precisely to avoid conflicts.

In particular, the 100-yard limitation imposed by Section 4-209(b)(1)(iii) should be narrowly construed and strictly enforced to prohibit the County from evading that limitation through the artifice of defining statutory terms selected by the General Assembly. Bill 109-21 fails on this ground, as it impermissibly reaches dealers locations completely outside 100 yards of the locations actually specified in Section 4-209(b)(1)(iii). If a county is free to define statutory terms employed by the General Assembly, then the county is effectively free to nullify the express preemption provisions of Section 4-209(a) as well as the other preemption provisions, outlined above. Manifestly, that result is contrary to any reasonable construction of legislative intent. See *Kushell v. Dep't of Natural Res*., 385 Md. 563, 576, 870 A.2d 186 (2005) ("The cardinal rule of statutory interpretation is to ascertain and effectuate the intent of the Legislature.").

Strictly and narrowly construing subsection 4-209(b)(1) and holding that a county may not regulate dealers avoids these conflicts. But, assuming *arguendo* that there is a conflict between subsection 4-209(b) and these express preemption provisions, then the rule is that the more specific statute controls over the more general statute. See, e.g., *Harvey v. Marshall*, 158 Md.App. 355, 365, 857 A.2d 529 (2004) ("'where two enactments—one general, the other specific—appear to cover the same subject, the specific enactment applies'") (quoting *Department of Public Safety and Correctional Services v. Beard*, 142 Md.App. 283, 302, 790 A.2d 57 (2002). See also *Department of Natural Resources v. France,* 277 Md. 432, 461, 357 A.2d 78 (1976) (the "general enactment must be taken to affect only such cases within its general language as are not within the provisions of the particular enactment"); *Cremins v. County Com'rs of Washington County*, 164 Md.App. 426, 448, 883 A.2d 966 (2005) (same). The preemption provisions, noted above, are

much more specific than Section 4-209. Each of these preemption statutes addresses a very specific subject matter, and purports to impose an absolute preemption as to that specific subject matter and activity.

For example, three of the five provisions address preemption of a particular type of activity (possession or transfer or sale) with respect to a "regulated firearm." The fourth provision preempts local regulation with respect to "the wearing, carrying, or transporting of handguns" which are also "regulated firearms" under Section 5-101(r)(1) of the Public Safety Article. The fifth provision, Section 5-207(a), preempts County regulation of the "transfer of a rifle or shotgun," which is also very specific, both as to the subject matter (rifle or shotgun) and the activity (transfer). In contrast, Section 4-209(b)(1)(iii) grants a limited exception from the otherwise broad preemption provisions of Section 4-209(a), which address **all** types of firearms and **all** types of activities, *viz*, "the purchase, sale, taxation, transfer, manufacture, repair, ownership, possession, and transportation" of "a handgun, rifle, or shotgun" and "ammunition." By any measure, the specialized preemption provisions are more specific than Section 4-209.

V. THE REGULATION OF DEALERS BY BILL 109-21 IS IMPLIEDLY PREEMPTED BY A COMPREHENSIVE SYSTEM OF STATE REGULATION OF DEALERS.

Bill 109-21 is impliedly preempted by a comprehensive scheme of regulation of the sale, possession, transfer and transport of firearms by the State law. Specifically, Bill 109-21 "deals with an area in which the General Assembly has acted with such force that an intent to occupy the entire field must be implied." *Howard County v. Potomac Electric Power Co*., 319 Md. 511, 522, 573 A.2d 821 (1990). Such a conflict is also found where "'ordinances which assume directly or indirectly to permit acts or occupations which the State statutes prohibit, or to prohibit acts permitted by statute or constitution, are under the familiar rule for validity of ordinances uniformly

declared to be null and void.'" *Worton Creek Marina, LLC v. Claggett*, 381 Md. 499, 510, 850 A.2d 1169 (2004) (quoting *Rossberg v. State*, 111 Md. 394, 416–417, 74 A. 581, 584 (1909). Moreover, "a local ordinance may also conflict with a state law even where it '[does] not specifically permit or prohibit an act permitted or prohibited by the state.'" *Wheelabrator Baltimore, L.P. v. Mayor and City Council of Baltimore,* 449 F.Supp.3d 549, 560 (D. Md. 2020), appeal dismissed, No. 20-1473, 2020 WL 6491586 (4th Cir. 2020) (quoting *Worton Creek Marina, LLC,* 850 A.2d at 1177). As stated in *Mora*, "the Legislature" has "occup[ied] virtually the entire field of weapons and ammunition regulation." *Mora*, 462 F.Supp.2d at 689. Bill 109-21 directly and indirectly interferes with that State regulation and is thus preempted.

Virtually all the factors that should be considered in making that implied preemption determination are present here. See *Board of County Commissioners v. Perennial Solar, LLC,* 464 Md. 610, 619-20, 212 A.3d 868 (2019) (collecting case law). In particular, the General Assembly has "enacted extensive and comprehensive legislation in the field" of firearms regulation. *Potomac Elec. Power Co. v. Montgomery County*, 80 Md.App. 107, 110, 560 A.2d 50 (1989). Such a system of comprehensive legislation is "the primary indicia" for determining the question of implied preemption. *Perennial Solar,* 464 Md. at 620. Any local ordinance that frustrates the objectives served by such comprehensive regulation is preempted. *Worton Creek Marina,* 381 Md. at 507. Here, the State has enacted a comprehensive system of regulation that includes multiple express preemption provisions, discussed above, that necessarily embody the General Assembly's desire to exercise robust and exclusive control over this field.

The County does not and cannot dispute that the General Assembly has enacted a comprehensive system for the regulation of firearms dealers in Maryland, detailed above.[5] The dealers are **also** subject to extensive regulation by the Maryland State Police, which is empowered to promulgate dealer regulations under MD Code, Public Safety 5-105 ("The Secretary shall adopt regulations to carry out this subtitle."). Those regulations are set forth in COMAR, §§ 29.03.01.42-.57 (available at 2), and have the force and effect of law. The resulting system of regulation is as comprehensive as it gets.

For example, COMAR 29.03.01.45 requires a State Police-supplied application and a separate license for "each place of business of the dealer." This system thus necessarily requires State Police approval of any change of location of the dealership. Bill 109-21 imposes County's own application requirement "for approval of the dealer's security measures" on a County-provided form, Section 12-6-104, and then imposes as well separate approval and notification requirements prior to any relocation of the dealer or of any off-site storage, Section 12-6-105. These local requirements obtain regardless of whether the dealer has secured State Police approval. Effectively, the County has created its own licensing system over and above the State requirements, thereby enabling the County to effectively negate a dealer's license and approvals by the State Police.

Other conflicts abound. COMAR 29.03.01.52, provides, for example, that "[t]he Secretary has the **sole authority** to regulate the sale of regulated firearms at a gun show." (Emphasis added). COMAR 29.03.01.53 similarly provides that "[t]he Secretary has the **sole authority** to issue a

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[5] See Part IV B, *supra.*

Temporary Transfer Permit" at a gun show. (Emphasis added). See also COMAR 29.03.01.54 (regulating the "sale, rental, or transfer of a regulated firearm at a gun show" by a dealer or other person); COMAR 29.03.01.56 (regulating the sale, rental or transfer of a regulated firearm at a public auction or flea market). Yet, Bill 109-21 usurps that "sole authority" of the State Police by expressly regulating gun shows, requiring prior **County** police approval before any person may proceed with a gun show and imposing security requirements on such shows, not imposed by State law or regulation. See Section 12-6-202. Bill 109-21 imposes the County's own requirements and thus effectively supersedes the State Police requirements.

The State Police also possess sole authority over the dealer's license issued by the State Police under COMAR 29.03.01.48. Specifically, COMAR 29.03.01.50 specifies the circumstances in which the State Police may suspend or revoke a dealer's license and thus shut down the dealer's business. Nothing in those regulations imposes security requirements, much less remotely contemplates shutting down a dealer for any failure to comply with security requirements imposed by a local government. Bill 109-21 effectively supersedes this provision by allowing the *County* to shut down a dealer without regard to these regulatory powers of the State Police and in direct contravention of the license to operate granted by the State Police. Bill 109-21 frustrates that regulatory system by prohibiting dealer businesses that are expressly licensed and permitted by State law. See *Worton Creek Marina*, 381 Md. at 511 (holding that a local ordinance was preempted by the "doctrine of conflict preemption" because it would frustrate the objectives of a State law and the regulations thereunder). Again, House Bill 1021 has passed both the House and the Senate and would impose specific security requirements on dealers and *would* allow the State Police to suspend or revoke a dealer's license for non-compliance. As also noted, those requirements of HB 1021 are materially different and less stringent than those imposed by Bill

109-21. Should HB 1021 become law, Bill 109-21 would directly frustrate *that* system of regulation as well.

Allowing a county to close a dealership would also plainly interfere with the sale of firearms to the public by that dealer. Such sales are likewise comprehensively regulated by State law. Specifically, the sale of regulated firearms, which are handguns under MD Code, Public Safety, § 5-101(r)(1), requires a prospective purchaser to complete an "application," MD Code, Public Safety, §§ 5-117, 5-118, and the application be approved by the Maryland State Police, MD Code, Public Safety, § 5-120, which must conduct its own background investigation of the applicant, MD Code, Public Safety, § 5-121. A purchaser must wait at least 7 days, but not more than 90 days, before completing the purchase of a regulated firearm, MD Code, Public Safety, § 5-123, and may only purchase one regulated firearm every 30 days, MD Code, Public Safety, § 5-128. Under MD Code, Public Safety, § 5-117.1(b), no dealer is permitted to "sell, rent, or transfer a handgun to a purchaser, lessee, or transferee" unless such person has a Handgun Qualification License issued by the State Police under § 5-117.1(h). All these provisions are moot if the County may shut down a dealership.

Similarly, the State requires the participation of a Federal Firearms Licensee in a private sale of a long gun, providing that such a sale to non-family members must be accomplished through a NICS background check conducted by a Federal Firearms Licensee (not a State licensed dealer). MD Code, Public Safety, § 5-204.1. This approach is consistent with the State's decision to have the State Police be the "Point of Contact" for purposes of the federal NICS background check system, but to allow Federal Firearms Licensees to be the "Point of Contact" with the NICS system for long gun sales. See https://www.fbi.gov/services/cjis/nics/about-nics. The State has thus

elected to leave the sale of a long gun to the federal regulation, which controls when and how a Federal Firearms Licensee may conduct sales. See 18 U.S.C. § 923.

A Federal Firearms Licensee need only become a State licensed dealer to sell "regulated firearms," not to sell long guns. See MD Code, Public Safety, § 5-101(e) (defining "dealer's license"). Yet, under Section 12-6-101(2), the Bill effectively negates that regulatory balance by expressly defining a "dealer" to include any person "in the business of selling, renting, or transferring firearms at wholesale or retail," thus imposing a layer of local control over sales by Federal Firearm Licensees that the State has quite deliberately left to federal regulation. The resulting dual regulatory system in the County virtually ensures "confusion" among dealers and customers alike. *Potomac Electric*, 80 Md. App. at 110. See also *Wheelabrator Baltimore*, 449 F.Supp.3d at 562 ("A local law may conflict with a state law even where the local law purports to strengthen the state standard.") (citing *Perdue Farms Inc. v. Hadder*, 109 Md.App. 582, 589, 675 A.2d 577 (1996) (striking down a local ordinance that would make a State-regulated activity more costly and thus in "inherent conflict" with "the State's approach").

Defendant does not deny the comprehensive nature of State regulation, but, again, justifies Bill 109-21 by asserting the General Assembly has authorized local regulation in Section 4-209(b). (D.Mem. at 14). That assertion begs the question of the scope of Section 4-209(b), discussed above. It also misses the point which is that while Section 4-209(b) may allow some limited exceptions to the broad preemption of firearm regulation set out in Section 4-209(a), the State has still comprehensively regulated and thus preempted local regulation of **dealers**. As noted, nothing in Section 4-209(b) remotely mentions State-regulated dealers or permits local regulation of dealers over whom the State has separately imposed a system of comprehensive regulation. Bill 109-21 reaches far beyond these very limited exceptions allowed in Section 4-209(b)(1)(iii) in an overt

attempt to achieve County-wide, across-the-board regulation of dealers and thus control the sale of firearms everywhere in the County.

The County relies on the Attorney's General Opinion, 93 Md. Op. Att'y Gen. 126 (2008), where the Attorney General opined that a municipality may enact regulations requiring an owner to report the lost or theft of a firearm. (D.Mem. at 16). Yet, the ordinance at issue in that Opinion did "not purport to affect the owner's right or qualifications *to purchase*, own, or possess a firearm." 93 Md. Op. Att'y Gen. at 133 (emphasis added). Here, Bill 109-21 does affect the right "to purchase" and to "possess" as it allows the County to shut down a dealer (thereby making a purchase and physical possession impossible) and imposes such heavy costs on dealers that they may not be able to stay in business. In an Attorney General Opinion not cited by the County, the Attorney General "cautioned" against county regulations like Bill 109-21, stating that "[t]he Legislature could not have intended to authorize localities to achieve indirectly what they may not achieve directly: across-the-board regulation of firearms." 82 Op. Att'y. 84, 86 (1997). Here, Bill 109-21 does precisely that as it regulates, across-the-board, the dealer's sale of firearms and ammunition without regard to otherwise applicable State law and regulations.

The County also errs in relying on *State v. Phillips*, 210 Md. App. 239, 63 A.3d 51 (2013). (D.Mem. at 15). In *Phillips*, the issue was whether Baltimore City's ordinance requiring gun offenders to register with the Police Commissioner was impliedly preempted. The court cited the preemption provisions of Section 4-209, but noted the complainant in that case "does not contend, nor could he that the Act is expressly preempted by conflict," because the ordinance at issue "does not regulate the possession or sale of a firearm." (210 Md.App. at 280). Here, of course, Bill 109-21 does "regulate the possession or sale of a firearm" as it allows the County to shut down a dealer completely simply by denying the yearly application required by the Bill. By requiring adherence

to the Bill's security requirements and punishing non-compliance, the Bill effectively conditions the right of the dealer to sell a firearm as well as the right of a customer to purchase a firearm (or ammunition) from the dealer. *Phillips* provides no guidance on whether such a county law is preempted.

VI. BILL 109-21 IS UNCONSTITUTIONALLY VAGUE.

Finally, several provisions of Bill 109-21 are unconstitutionally vague and must be struck down under Article 24 of the Maryland Declaration of Rights.

A. The Due Process Clause of the Fourteenth Amendment.

The Due Process Clauses of the Fifth and Fourteenth Amendments prohibits the enactment or enforcement of vague legislation. *Sessions v. Dimaya*, 138 S.Ct. 1204, 1212 (2018) ("the prohibition of vagueness in criminal statutes…is an 'essential' of due process, required by both 'ordinary notions of fair play and the settled rules of law"). A penal statute must "define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement." *Kolender v. Lawson*, 461 U.S. 352, 357 (1983). "[A] vague law is no law at all." *United States v. Davis*, 139 S. Ct. 2319, 2323 (2019). See also *Grayned v. City of Rockford*, 408 U.S. 104, 108-109 (1972) ("A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis"): *Giovani Carandola, Ltd. v. Fox*, 470 F.3d 1074, 1079 (4th Cir. 2006) (recognizing that "[a] statute is impermissibly vague if it either (1) fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits or (2) authorizes or even encourages arbitrary and discriminatory enforcement" (internal quotations omitted)).

Such a statute need not be vague in all possible applications in order to be void for vagueness under the Due Process Clause. *Johnson v. United States*, 576 U.S. 591, 602 (2015) ("our holdings squarely contradict the theory that a vague provision is constitutional merely because there is some conduct that clearly falls within the provision's grasp"). "*Johnson* made clear that our decisions 'squarely contradict the theory that a vague provision is constitutional merely because there is some conduct that clearly falls within the provision's grasp.'" *Dimaya*, 138 S.Ct. at 1214 n.3. A court also "cannot construe a criminal statute on the assumption that the Government will use it responsibly," *United States v. Stevens*, 559 U.S. 460, 480 (2010), and "cannot find clarity in a wholly ambiguous statute simply by relying on the benevolence or good faith of those enforcing it." *Wollschlaeger v. Governor, Fla*., 848 F.3d 1293, 1322 (11th Cir. 2017) (en banc). Such statutes are facially invalid.

B. Article 24 of the Maryland Declaration of Rights.

The foregoing body of federal constitutional case law is fully applicable to plaintiffs' due process claim under Article 24 of the Maryland Declaration of Rights in Count IV. It is well established that Maryland's constitutional provisions are to be construed *in pari materia* with their federal counterparts. *Dua v. Comcast Cable of Md, Inc*., 370 Md. 604, 621, 805 A.2d 1061 (2002). Thus, Article 24 likewise prohibits the enactment or enforcement of vague legislation. *Galloway v. State,* 365 Md. 599, 614, 781 A.2d 851 (2001) ("The void-for-vagueness doctrine as applied to the analysis of penal statutes requires that the statute be 'sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties.'") (citation omitted). Under Article 24, a statute must provide "legally fixed standards and adequate guidelines for police ... and others whose obligation it is to enforce, apply, and administer [it]" and "must eschew arbitrary enforcement in addition to being intelligible to the reasonable person." (Id. at

615). Under this test, a statute must be struck down if it is "'so broad as to be susceptible to irrational and selective patterns of enforcement.'" (Id. at 616), (quoting *Bowers v. State*, 283 Md. 115, 122, 389 A.2d 341 (1978)). See also *Ashton v. Brown*, 339 Md. 70, 89, 660 A.2d 447 (1995); *In Re Leroy T.*, 285 Md. 508, 403 A.2d 1226 (1979). Pre-enforcement review of statutes challenged for vagueness is fully available in Maryland, regardless of whether a fundamental right is involved. See *Pizza di Joey*, 470 Md. at 362 ("this Court, the Supreme Court, and other state and federal courts have entertained pre-enforcement facial vagueness challenges where there was no 'fundamental' right alleged to be at stake").

While the void-for-vagueness doctrine applies most vigorously to penal statutes, it also applies to laws imposing only civil penalties. *Neutron Products, Inc. v. Department Of The Environment*, 166 Md.App. 549, 609, 890 A.2d 858 (2006) ("Maryland courts have applied the void for vagueness doctrine to civil penalties") (citing *Finucan v. Md. Bd. of Physician Quality Assurance*, 380 Md. 577, 591, 846 A.2d 377, *cert. denied*, 543 U.S. 862 (2004) (applying the void for vagueness analysis to regulations imposing sanctions on physicians); *Blaker v. State Bd. of Chiropractic Examiners,* 123 Md.App. 243, 257 n.3, 717 A.2d 964 (1998) (applying void for vagueness analysis to regulations imposing sanctions on licensed chiropractors); *Tidewater/Havre De Grace, Inc. v. Mayor and City Council of Havre de Grace*, 337 Md. 338, 653 A.2d 468 (1995) (applying void for vagueness analysis to a local tax ordinance). See also *Pizza di Joey*, 470 Md. at 363 (collecting cases).

Full application of the void-for-vagueness doctrine is appropriate where the challenged statute, though technically civil, imposes remedies that can be viewed as punitive. See *McDonnell v. Comm'n on Medical Discipline*, 301 Md. 426, 436, 483 A.2d 76 (1984) (noting that while a disciplinary proceeding was civil in nature, it nonetheless had a "punitive aspect," and holding, as

a result, the statute "should be strictly construed against the disciplinary agency"). As detailed below, the terms employed by Bill 109-21 are in dire need of clarity for they define the scope of the regulation itself. If the dealer's "location" is more than 100 yards away from a "place of public assembly" as defined by Section 12-6-101(c) of Bill 109-21, then the dealer is not regulated at all. See Section 12-6-102 ("Applicability"). If the dealership is within 100 yards of such places, then the dealer may have to undertake extremely expensive modifications to the store or go out of business. Bill 109-21 admits of no other alternatives. The dealers do not have the luxury of waiting until the County enforces the Bill. By that time, the dealer will face fines and a shut-down of his or her dealership with the consequent destruction of the dealer's livelihood. These consequences are highly punitive. It is thus critically important that the ordinance be well defined. It is not.

C. Bill 109-21 is Fatally Vague.

Bill 109-21 is enforceable with a civil penalty and other sanctions, including a denial of permission to operate and/or posting police outside the shuttered business at the dealer's expense. While these penalties are not criminal they are especially harsh as they threaten the very livelihood of the dealer. Bill 109-21 purports to regulate places within 100 yards of a place of public assembly, but defines such a "place" to mean "A LOCATION USED FOR A GATHERING OF 50 OR MORE PERSONS FOR DELIBERATION, WORSHIP, ENTERTAINMENT, EATING, DRINKING, AMUSEMENT, SHOPPING, AWAITING TRANSPORTATION, OR SIMILAR USES." Section 12-6-101(3). Contrary to the County's cavalier proffer of definitions (D.Mem. at 20), all of these terms are fatally vague because the provision (1) does not provide adequate notice to dealers, and (2) "it fails to provide legally fixed standards and adequate guidelines for police,

judicial officers, triers of fact and others whose obligation it is to enforce, apply and administer" this ordinance. *Bowers*, 283 Md. at 121.

First, the term "location" is not defined. It could include a particular store, in which case most small dealerships would be excluded from the definition, as such small shops seldom if ever have 50 or more people in a single "gathering" inside the store. But it could also include an entire shopping or strip mall in which the store is sited, in which case every store in the entire mall could be deemed to be a covered location. The enforcing official is afforded no guidance on how broadly the term is to be applied. The Bill does not even define how the "100 yards" modifier is measured. Is it as the "crow flies" or is measured by some other, unspecified, method? Does 100 yards measured to include the parking lot or does the 100 yards have to reach to a doorway? These ambiguities are even greater when "location" is coupled with its modifier, *viz*., is "used for a gathering of 50 or more persons." Is such a location covered only when 50 or more persons are in attendance at the same time or over a span of time? Are such locations covered only if they are *typically* used for such gatherings, or is one such "use" enough? Is such a location covered if it was **ever** been used for such a gathering of 50 or more persons or is it included if it might be so used in the future? Bill 109-21 provides no answers to these questions. As a result, the plaintiff dealers here have no clear answer as to whether their stores are such "locations" or whether their stores are within 100 yards of such a location.

The activities covered in such gatherings are likewise so broad as to be hopelessly vague. The term "deliberation" is never defined. Black's Law Dictionary defines "deliberation" to mean "[t]he act of carefully considering issues and options before making a decision to taking some action." Black's Law Dictionary (11th ed. 2019). A jury "deliberates," and that is the example used in Black's, but it seems doubtful the term is thus limited as courthouses are public buildings,

which are separately included by the Bill. The County suggests it could include the General Assembly or the County Council chambers (D.Mem. at 20), but those locations are likewise located in public buildings. What else it includes is left to the boundless imagination and discretion of the enforcing official.

Similarly, the term "entertainment" is not defined. Black's defines "entertain" to mean simply "[t]o amuse or please" or "[t]o receive as a guest or provide hospitality." That definition provides no notice to the plaintiff dealer that his or her store is covered or any guidance to the enforcement official for making that determination. The term "worship" is likewise vague. While, Section 4-209(b)(1)(iii) expressly covers a "church," Bill 109-21 omits "church" in defining its applicability, but includes instead a "house of worship." See Section 12-6-102. A "church" or even a "house of worship" can be clear enough, but the County's definition of "place of public assembly" is not limited to "houses" of worship, but it includes places "used" "**for**" worship. Such a place could include prayer meetings in a private home. The dealer and enforcing officials are given no clue about what such "gatherings" encompass or how a dealer or an enforcement official could make that determination in a reasonably consistent and foreseeable way.

The term "amusement" is likewise unclear. The term might include an "amusement park" as the County suggests (D.Mem. at 20). However, the Bill emphatically is not restricted to an amusement "park," but rather includes all locations "used" by 50 or more persons "for amusement." Such a place conceivably could even include a playground for children, a private club, or private land used for a Little League diamond. Black's Law Dictionary does not define the term, but Merriam-Webster's on-line dictionary (the County's preferred dictionary, D.Mem. at 20 n.5), most aptly defines "amusement" to mean a "pleasurable diversion." https://www.merriam-webster.com/dictionary/amusement. Such a definition is so hopelessly broad that is could cover

just about any non-work activity and thus cannot possibly provide any notice to the dealers or guidance to the enforcement official.

The County's definition includes "eating" or "drinking" as "locations" which are covered if 50 or more persons gather for that purpose. These terms might well include large restaurants where 50 or more persons may be seated, but nothing in the text suggests that terms are actually so limited. Again, no notice and no enforcement guidance are provided. Similarly, "shopping" could include Annapolis Mall, but none of the plaintiff dealers is remotely within 100 yards of the Annapolis Mall and the term is certainly not limited to such locales. For example, the term might also include an automobile dealership or even a Starbucks used for on-line "shopping." And again, there is no guidance on how the modifier of "50 or more persons" applies to such "shopping" locations? Does it include only locations which are typically or often used by 50 or more persons to go shopping, or locations where that many persons have been present only once or only rarely? Are 50 persons defined by reference to a store in Annapolis Mall, or will the enforcing official consider the entirety of the Mall as a single "location" for purposes of applying the 50 person requirement? The potential for arbitrary enforcement is apparent.

The term "awaiting transportation" is truly hopeless. The gate areas of BWI Airport at departure time or a MARC train station at the morning commuting hours might be fairly included in this term, but does the term include a deserted train station in the middle day or a bus stop? If so, is there any clear way for a dealer or an enforcement official to determine if the bus stop or station is "used" by 50 or more persons or even has ever been used by a "gathering" of 50 or more persons? The term "or similar uses" is especially vague. The types of activities listed by Bill 109-21 have no common denominator or defining characteristic. There is no metric for what are "similar uses." There is no way for a dealer to know what that term encompasses and there is

utterly no guidance for the enforcing official. In short, Bill 109-21 fails to "provide legally fixed standards and adequate guidelines for police, judicial officers, triers of fact and others whose obligation it is to enforce, apply and administer" the Bill. *Bowers*, 283 Md. at 121.

As should be apparent, the flaw common to all these sorts of listed activities or "gatherings" is not merely lack of adequate notice (also present), but that the enforcement official is virtually unhindered in deciding what locations are covered as a "place of public assembly" and what places are not. In particular, the County's limitation of coverage to locations "used by 50 or more persons" is an empty set, as the ordinance provides no meaningful guidance on how that requirement will be assessed, either by the dealers or by enforcement officials. This sort of vagueness "is so broad" as to make Bill 109-21 "susceptible to irrational and selective patterns of enforcement." *Bowers*, 283 Md. at 122. Of course, if (as it appears) the County intended Bill 109-21 to cover all dealers, County-wide, it could have said so. At least that sort of ordinance would have been clear. But the County no doubt realized that sort of honest coverage could not be defended under the limited scope of regulation allowed by Section 4-209(b)(1)(iii), which is the **only** source of authority claimed by the County.

At bottom, the County has purposefully expanded a "place of public assembly" using vague terms so as to accord its enforcement officials the maximum leeway for citing dealers and closing them down for non-compliance. The vagueness of the definition must be viewed as fully intentional as clarity is hardly "either impossible or impractical." *Kolender*, 461 U.S. at 361 (striking down a statute as "vague on its face" where it allowed the police to demand "credible and reliable" identification). Indeed, to the County, the resulting uncertainty is "not a bug, it's a feature," as it provides an extremely effective means to threaten dealers with enforcement, thereby coerce compliance or closure by dealers who, in fact and law, may not subject to County regulation at all

under Section 4-209(b). See *Kolender*, 461 U.S. at 360 (a statute is unconstitutionally vague where it "furnishes a convenient tool for 'harsh and discriminatory enforcement by local prosecuting officials'") (citation omitted); *City of Houston v. Hill*, 482 U.S. 451, 465 (1987) ("we have repeatedly invalidated laws that provide the police with unfettered discretion to arrest individuals for words or conduct that annoy or offend them").

This threat of arbitrary enforcement hangs over the dealers' heads like the proverbial Sword of Damocles. The "value of a sword of Damocles is that it hangs—not that it drops." *Arnett v. Kennedy*, 416 U.S. 134, 231 (1974) (Marshall, J., dissenting). See also *Reno v. ACLU,* 521 U.S. 844 882 (1997) (same). That is intolerable for any business person. In short, the deliberative vagueness of Bill 109-21 is an abuse of power by the County that this Court should not countenance. The Bill's underlying intent to eliminate dealers is apparent and that intent is illegitimate. See, e.g., *Grossbaum v. Indianapolis-Marion Co. Bldg. Authority*, 100 F.3d 1287, 1294 (7th Cir. 1996) ("courts will investigate motive when precedent, text, and prudential considerations suggest it necessary in order to give full effect to the constitutional provision at issue").

Bill 109-21 is replete with other vague terms as well that depend on the unbridled discretion of the enforcement official. For example, Section 12-6-106(b)(1) of Bill 109-21 requires a dealer to install bollards, concrete barriers, steel barricades, planters or landscape bounders "or other physical barriers that prevent vehicular or other intrusion into the building." It should be obvious that there is virtually no barrier, short of a massive steel and concrete bunker, that can completely "prevent" such "vehicular or other intrusion." Yet, the requirement is not qualified by any notion of a cost-benefit assessment or reasonableness and nothing in the requirement limits the discretion of the enforcing official as to what barrier is sufficient. There is not even a definition for "other

intrusion." Thus, the Bill requires the dealer to employ barriers sufficient to "prevent" any "intrusion" of **any** type. Again there are no guiding principles that limit the discretion of the enforcing officer, who is thus free to select and require any barrier at whim and caprice.

Similar vagueness if found in other security measures required by the County in Bill 109-21. As noted, Section 12-6-106(c) as enacted by the Bill, requires a dealer to secure firearms when the business is closed with a heavy gauge metal cabinet with "an adequate locking device" or a heavy gauge mesh cage equipped with "an adequate locking device on the doors," or a display case in which the firearms are secured with a steel cable or "other adequate locking device" that is anchored in a manner that "prevents the removal of the firearms from the premises." The determination of what is an "adequate locking device" is left to the enforcing official. And it is hard to imagine what device could be "anchored" so as to "prevent[] the removal" of firearms. What is sufficient is, again, left to the unlimited discretion of the enforcing official.

The enforcement mechanism likewise embodies the same, unlimited discretion. Section 12-6-301 allows the County Police to determine whether a violation "*may bring the security of firearms into question*." (Emphasis added). No guidance is provided for that nebulous determination. If so, then the police may post "one or more officers or security guards at the location at the expense of the dealer" until "the violation has been abated *to the satisfaction* of the Police Department" or until "the inventory has been removed to a secure location and the Police Department has verified the move." (Emphasis added). All these provisions provide for exercise of unlimited discretion. The potential for arbitrary enforcement of these provisions is apparent.

Again, Bill 109-21 may not be construed or sustained on the assumption that enforcement will be reasonable. Again, a court "cannot find clarity in a wholly ambiguous statute simply by relying on the benevolence or good faith of those enforcing it." *Wollschlaeger*, 848 F.3d at 1322.

"Such unfettered discretion [in administering and enforcing a state program] is untenable." *Serafine v. Branaman*, 810 F.3d 354, 369 (5th Cir. 2016). When faced with such a law, the proper course of action is to strike it down. As the Supreme Court has stated, "[w]hen Congress passes a vague law, the role of courts under our Constitution is not to fashion a new, clearer law to take its place, but to treat the law as a nullity and invite Congress to try again." *Davis*, 139 S.Ct. at 2323. Bill 109-21 is shot through with vague and broad provisions that allow selective and arbitrary enforcement. This Court should so declare and enjoin its enforcement.

D. Plaintiffs Have Stated Both An "As Applied" Vagueness Challenge And A "Facial" Vagueness Challenge To Bill 109-21.

1. Plaintiffs are entitled to summary judgment on their "as applied" claims.

The County claims that it is "unclear" as to whether the Amended Complaint raises an "as applied" vagueness challenge or merely a "facial challenge." (D.Mem. at 17). As set forth below, the Amended Complaint rather clearly raises **both** types of claims. The County is certainly wrong in contending (without citation) that an "as applied" challenge can only be raised if a dealer has been "cited" for a violation. (Id.). Under both Maryland and federal jurisprudence, a pre-enforcement claim may be brought for both types of claims. See, e.g., *Pizza di Joey,* 470 Md. at 903; *Milavetz, Gallop & Milavetz, P.A. v. United States*, 559 U.S. 229, 234, 248-249 (2010) (considering an as-applied pre-enforcement challenge brought under the First Amendment); *PDR Network, LLC v. Carlton & Harris Chiropractic, Inc.,* 139 S.Ct. 2051 (2109) (noting that plaintiffs may bring "both facial, pre-enforcement challenges and as-applied challenges to agency action").

In any event, the County makes too much out of this distinction between facial and as applied claims. As the Supreme Court has explained, "[t]he distinction . . . *goes to the breadth of the remedy employed by the Court, not what must be pleaded in a complaint." Citzens United v.*

FEC, 558 U.S. 310, 331 (2010) (emphasis added). See *Six Star Holdings, LLC v. City of Milwaukee*, 821 F.3d 795, 803 (7th Cir. 2016) ("Because the distinction between facial and as-applied challenges informs only the choice of remedy, 'not what must be pleaded in the complaint,' a court may construe a challenge as applied or facially, as appropriate."); *Gross v. United States*, 771 F.3d 10, 15 (D.C. Cir. 2014), *cert. denied,* 575 U.S. 951 (2015) (""[t]he substantive rule of law is the same for both challenges'") (citation omitted).

The County is also wrong in asserting that plaintiffs cannot assert an "as applied" challenge because they have supposedly alleged that "they will violate the Code provisions when it takes effect" (D.Mem. at 17), and because the plaintiff dealers have supposedly also asserted in the Amended Complaint that the Bill "applies to each of them." (D.Mem. at 20). Each of the plaintiff dealers have alleged that their dealership "is arguably within 100 yards of a 'place of public assembly' as defined by Bill 109-21." Amended Complaint, ¶¶ 21-24 (emphasis added). See also Amended Complaint ¶ 45 (alleging that the plaintiffs intend to engage in conduct "arguably regulated" by the vague provisions of Bill 109-21 and thus that they would be "in arguable non-compliance"). The terms "arguably" and "arguable" are alleged because it is *possible* that a dealer is covered by the ordinance, but no plaintiff dealer can tell from the vague language used by Bill 109-21 whether or not their location is *actually* covered and thus regulated by Bill 109-21. For example, one dealer is arguably located within 100 yards of a bus stop, but that dealer has no way of knowing whether a County official would conclude that a bus stop is included within the term "awaiting transportation." Neither the dealer nor the enforcement official is in a position to determine how or whether that bus stop also satisfies the "50 or more persons" requirement and is thus within the scope of "place of public assembly" as the term is defined by the Bill in Section 12-6-101(c).

Thus, in paragraph 45 of the Amended Complaint, plaintiffs have alleged that "[e]ach dealer cannot be sure whether Anne Arundel County law enforcement officials will deem that its business location falls within the expanded 100-yard radius of regulation enacted by Bill 109-21 and each dealer is susceptible to irrational and selective patterns of enforcement by County law enforcement officials." These allegations are fully sufficient to state an "as applied" challenge. Defendant has not disputed these allegations, much less submitted any evidence demonstrating whether or not the plaintiff dealers are, in fact, within 100 yards of any of locations that Bill 109-21 purports to regulate. That failure suggests that the County is likewise unsure of the scope of these provisions. Given its failure to submit any supporting evidence, the County is not entitled to summary judgment on plaintiffs' "as applied" claim. In contrast, the allegations of the plaintiff dealers are confirmed in each of the dealer's Declarations attached to plaintiffs' motion for summary judgment.

2. Plaintiffs are entitled to summary judgment on their facial claims.

Plaintiffs likewise are entitled to summary judgment on their verified facial claims. See Amended Complaint ¶ 44 (alleging that Bill 109-21 on its face "fails to provide 'legally fixed standards' or 'adequate guidelines' to enforcing officials in violation of Article 24 of the Maryland Declaration of Rights"). In *Pizza di Joey,* the Court of Appeals made clear that "[a] facial vagueness challenge is appropriate where, due to a lack of guiding standards, there is a high risk that authorities necessarily will enforce the law arbitrarily." (470 Md. at 364). The Court also stated that a "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.'" (470 Md. at 363) (quoting *Dias v. City & Cty. of Denver*, 567 F.3d 1169, 1179-80 (2009). Both circumstances are present here.

First, as explained above, Bill 109-21 has a profound "lack of guiding standards," thus making a facial attack fully "appropriate." *Pizza di Joey*, 470 Md. at 364. The Bill's definition of a "place of public assembly" is so vague in so many respects that it is "incapable of valid application." *Pizza di Joey*, 470 Md. at 363. Even assuming *arguendo*, that one term used in this definition is capable of a valid application, a dealer is still subject to the other vague terms that govern the Bill's scope and enforcement. See *League of Women Voters v. Sullivan*, 5 F.4th 714, 728 (7th Cir. 2021) (noting that even the "no-set-of-circumstances" standard does not mean that facial challenges are impossible. It is always possible to imagine something"). Indeed, as noted above, the Supreme Court ruled in both *Johnson* and *Dimaya* that "'our decisions 'squarely contradict the theory that a vague provision is constitutional merely because there is some conduct that clearly falls within the provision's grasp.'" *Dimaya*, 138 S.Ct. at 1214 n.3 (quoting *Johnson*, 576 U.S. at 602).

In *Pizza di Joey*, the Court of Appeals recognized that this holding in *Johnson* was an "exception" to the "no-set-of-circumstances" rule, but held that *Johnson* did not apply to a statute where "it is clear" that there were "many instances" in which the statute at issue could be validly applied. (470 Md. at 367). Here, in contrast, it is hardly "clear" that there are "many instances" in which the County's ordinance could be validly applied, as the combination of terms that govern the applicability of the ordinance are so exceptionally vague that **no** dealer can be sure if the ordinance applies or not, much less be sure of how it will be enforced. That uncertainty is heightened in this case because it is hardly "clear" that Bill 109-21 is a valid enactment **at all**. See Parts III-V, *supra*. As the Supreme Court explained in *City of Los Angeles v. Patel,* 576 U.S. 409,

418 (2015), in assessing whether a facial challenge lies, the proper inquiry is "measured . . . by [the statute's] impact on those whose conduct it affects." While it is conceivable that Bill 109-21 might be applicable to some hypothetical dealer somewhere in the County, that act of imagination is irrelevant to whether the Bill is vague as to actual dealers, including the plaintiff dealers here. Significantly, the County has not identified **a single dealer**, anywhere in the County, who is validly covered by Bill 109-21. Once again, that suggests that the County likewise has no clue concerning the Bill's scope.

Second, facial invalidity for vagueness is also appropriate as the Bill implicates fundamental Second Amendment rights. As the Court of Appeals noted in *Pizza di Joey*, "a person may assert a facial vagueness challenge if the challenged statute **implicates** the First Amendment **or another fundamental right**." (470 Md. at 904) (emphasis added). Indeed, the Supreme Court has facially invalidated statutes "under a diverse array of constitutional provisions" including a vagueness challenge under the Due Process Clause and a facial challenge under the Second Amendment. *Patel*, 576 U.S. at 415. Here, as detailed below, Bill 109-21 "implicates" the Second Amendment right of County residents to acquire firearms and the ancillary right of dealers to sell firearms. A facial challenge is thus appropriate here.

The Second Amendment protects "the right of law-abiding, responsible citizens to use arms in defense of hearth and home." *District of Columbia v. Heller*, 554 U.S. 570, 635 (2008). That right is fundamental and thus fully incorporated as against the States under the Fourteenth Amendment. *McDonald v. City of Chicago*, 561 U.S. 742, 767 (2010) (holding that "the right to keep and bear arms *is fundamental* to our scheme of ordered liberty") (emphasis added). Law-abiding responsible citizens have a Second Amendment right to purchase firearms. *Teixeira v. City of Alameda*, 873 F.3d 670, 677 (9th Cir. 2017) (en banc), *cert. denied*, 138 S.Ct. 1988 (2018) ("the

core Second Amendment right to keep and bear arms for self-defense 'wouldn't mean much' without the ability to acquire arms").

This Second Amendment right to acquire necessarily includes the corresponding, "ancillary" right of firearms dealers to sell firearms. *Teixeira*, 873 F.3d at 682 ("[c]ommerce in firearms is a necessary prerequisite to keeping and possessing arms for self-defense"). "[T]he Second Amendment rights of potential customers and the interests of retailers seeking to sell to them will be aligned" and that "firearms commerce plays an essential role today in the realization of the individual right to possess firearms recognized in *Heller*." *Teixeira*, 873 F.3d at 687. See also *United States v. Marzzarella*, 614 F.3d 85, 92 n.8 (3d Cir. 2010) ("If there were somehow a categorical exception for [commercial] restrictions, it would follow that there would be no constitutional defect in prohibiting the commercial sale of firearms. Such a result would be untenable under *Heller*.").[6]

Under these principles, the County would plainly be without power to force the closing of firearms dealers, County-wide. For example, *Teixeira* rejected the Second Amendment challenge to a county denial of the plaintiff's application to open a single gun store, noting that "given the number of gun stores in the County as a whole and in the unincorporated areas, as well as the geography of the County and the distribution of people within it, [the plaintiff] likely cannot allege that residents are meaningfully restricted in their ability to acquire firearms." *Teixerira*, 873 F.3d at 687. Here, in contrast, Bill 109-21 was drafted and enacted with the express purpose regulating

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[6] The Second Amendment also includes the right to sell and purchase ammunition. *Jackson v. City and County of San Francisco*, 746 F.3d 953, 967 (9th Cir. 2014), *cert. denied*, 576 U.S. 1013 (2015) ("without bullets, the right to bear arms would be meaningless").

all firearm dealers in the entirety of Anne Arundel County. As explained above, that is the only possible explanation for the County's expanded and incredibly vague definition of "place of assembly." After all, the Bill purports to regulate **only** firearms dealers (and gun shows) and there is no indication that the County sought to regulate only a subclass of dealers.

To be sure, plaintiffs here do not (and need not) assert that Bill 109-21 is facially invalid under the Second Amendment. Rather, the interests protected by the Second Amendment are "implicated" by Bill 109-21 because the Bill can be applied to regulate to the point of near extinction the ability of County dealers to sell firearms. That result would necessarily affect the Second Amendment rights of County residents to acquire firearms in the County. As explained above, the vague language of Bill 109-21 gives County enforcement officials the maximum leeway to coerce compliance and force the closure of any dealer who cannot comply. It is thus more than plausible that Anne Arundel County residents **will be** "meaningfully restricted," *Teixeira*, 873 F.3d at 687, in their ability to acquire firearms. Plaintiffs have thus alleged (Amended Complaint ¶ 20) that these "constitutional concerns" are implicated in this case. The County has not disputed (or mentioned) that allegation. See *Mathews v. Cassidy Turley Maryland, Inc.*, 435 Md. 584, 80 A.3d 269 (2013) ("The court is to consider the record in the light most favorable to the non-moving party and consider any reasonable inferences that may be drawn from the undisputed facts against the moving party."). That allegation is confirmed by the accompanying Declarations of each of the dealers, all of whom state that the compliance costs imposed by Bill 109-21 will undermine their ability to stay competitive in a "highly competitive market, and "could well force" them to close. Declaration of Micah Schaefer, ¶ 6; Declaration of Donna Worthy, ¶ 6; Declaration of William Quick, ¶ 6; Declaration of John Walker, ¶ 6.

Just as the County may not directly shut down dealers, it may not seek to accomplish the same result indirectly. The County may not, consistent with the Second Amendment, enact vague ordinances that may be enforced by shutting down dealers or by imposing such high costs that operating a dealership becomes economically infeasible. See, e.g., *Fairbank v. United States*, 181 U.S. 283, 294 (1901) (noting "the great principle that what cannot be done directly because of constitutional restriction cannot be accomplished indirectly by legislation which accomplishes the same result."); *Lebron v. Secretary*, 710 F.3d 1202, 1217 (11th Cir. 2013) ("where an individual's federal constitutional rights are at stake, the state cannot accomplish indirectly that which it has been constitutionally prohibited from doing directly") (collecting cases).

As *Pizza di Joey* makes clear, where, as here, a fundamental constitutional right is "implicated," the court conducts a facial review without regard to whether the law is capable of a valid application. (470 Md. at 362). In *Americans for Prosperity Foundation v. Bonta*, 141 S.Ct. 2373 (2021), for example, the Supreme Court rejected the state's argument that "a plaintiff bringing a facial challenge must 'establish that no set of circumstances exists under which the [law] would be valid . . . or show that the law lacks 'a plainly legitimate sweep.'" (141 S.Ct. at 2387). Rather, the Court held that "[i]n the First Amendment context . . . we have recognized "a second type of facial challenge, whereby a law may be invalidated as overbroad if a substantial number of its applications are unconstitutional, judged in relation to the statute's plainly legitimate sweep.'" (Id.). See also *Stevens*, 559 U.S. at 472-73 (2010).

Similarly, in the *City of Chicago v. Morales,* 527 U.S. 41, 54 (1999), the Supreme Court facially invalidated on vagueness grounds a Chicago ordinance that banned loitering. The plurality opinion reasoned that "the freedom to loiter for innocent purposes is part of the 'liberty' protected by the Due Process Clause," (527 U.S. at 53), ruling that "[w]hen vagueness permeates the text of

such a law, it is subject to facial attack." (Id. at 55). In so reasoning, the opinion expressly declined to inquire to whether there some applications of the law that would have been valid where "vagueness permeates the ordinance." (527 U.S. at 55 n.22). Here, as in *Morales*, the law implicates a constitutional right (the Second Amendment). Here, as in *Morales*, vagueness "permeates" Bill 109-21, thus making a facial attack fully appropriate without regard to whether there are possible valid circumstances for the County's regulation of dealers. A facial vagueness challenge to Bill 109-21 is thus appropriate. *Pizza di Joey*, 470 Md. at 362. In short, Bill 109-21 is fatally vague both as applied and facially. Accordingly, plaintiffs are entitled to declaratory and injunctive relief on Count IV.

VI. ALTERNATIVELY, THIS COURT SHOULD PRELIMINARILY ENJOIN THE ENFORCEMENT OF BILL 109-21.

Alternatively, this Court should preliminarily enjoin the enforcement of Bill 109-21. The rule in Maryland, as elsewhere, is that "the appropriateness of granting an interlocutory injunction is determined by examining four factors: (1) the likelihood that the plaintiff will succeed on the merits; (2) the "balance of convenience" as determined by whether greater injury would be done to the defendant by granting the injunction than would result from its refusal; (3) whether the plaintiff will suffer irreparable injury unless the injunction is granted; and (4) the public interest." *Department of Transp., Motor Vehicle Admin. v. Armacost,* 299 Md. 392, 404-405, 474 A.2d 191 (1984). See also *Winter v. Natural Resources Defense Council, Inc.,* 555 U. S. 7, 20 (2008). Preliminary injunctive relief is forward looking, and is therefore used to "protect[] a party, in a preventative manner, from future acts," and it thus "maintain[s] the status quo between parties until the issues in contention are fully litigated." *Eastside Vend Distributors, Inc. v. Pepsi Bottling Grp., Inc*., 396 Md. 219, 224 (2006). The status quo between the parties is "the last, actual,

peaceable, non-contested status which preceded the pending controversy." (Id. at 241). Plaintiffs here easily satisfy all these considerations.

As demonstrated above, plaintiffs have shown a strong likelihood of success on at least one of their claims. Plaintiffs need not show that success on the merits is assured, but only that they have "a real probability of prevailing on the merits, not merely a remote possibility of doing so." *Fogle v. H&G Restaurant*, 337 Md. 441, 456, 654 A.2d 449 (1995). If the foregoing discussion on each claim demonstrates anything, it establishes that plaintiffs have a "real probability" of prevailing on their claims.

The "balance of convenience" also strongly favors plaintiffs. Under this factor, "a court in the ordinary case will consider whether greater injury would be done to the defendant by granting the injunction than would result to the plaintiff from its refusal." *State Dept. of Health and Mental Hygiene v. Baltimore County,* 281 Md. 548, 557, 383 A.2d 51 (1977). Here, the preliminary injunction would simply maintain the *status quo ante* until this Court can fully adjudicate the merits. As explained in the motion for an expedited hearing, the effective date of Bill 109-21 for existing dealers, such as plaintiffs, is 180 days after the Bill became effective, or August 23, 2022. See Section 3 of Bill 109-21. In their Motion for Expedited Hearing and Decision, plaintiffs have asked this Court for an expedited decision well prior to August 23, 2022. An early decision will afford the losing party an opportunity to seek appellate relief, if appropriate or necessary.

Granting a preliminary injunction prior to the effective date of the Bill will not harm the defendant in the slightest, as the Bill does not go into effect until that date and a final judgment is likely before the August 23, 2022, effective date arrives. In any event, Bill 109-21 is radically new with respect to dealers in the County. The County is not harmed by maintaining the *status quo* until the litigation is completed. In contrast, refusing a preliminary injunction could greatly harm

the plaintiff dealers, as the costs alone inflicted by Bill 109-21 might put these dealers out of business. See attached Declarations of the plaintiff dealers. Indeed, the exterior barriers requirements of Bill 109-21 will force plaintiff WORTH-A-SHOT to close, as the landlord has already refused to consent to such installations. See Declaration of Donna Worthy, ¶4. Even if feasible, compliance will require long lead times and heavy costs to procure and install all the security measures required by Bill 109-21. Plaintiffs have a powerful legitimate interest in avoiding such expenses if Bill 109-21 is invalid. The County's interest in full enforcement as of the effective date pales in comparison. See *Lerner v. Lerner*, 306 Md. 771, 783-84, 511 A.2d 501 (1986).

Third, there is no doubt that plaintiffs will suffer irreparable injury if the Bill is allowed to go into effect on August 23, 2022. As the accompanying Declarations of the plaintiff dealers state, compliance with the requirements imposed by Bill 109-21 is very costly. While the availability of a damages remedy normally militates against equitable relief, none of these costs inflicted by Bill 109-21 is likely to be recoverable from the County, as the County would undoubtedly claim governmental immunity from any sort of damages claim. *Godwin v. County Comm'rs*, 256 Md. 326, 334, 260 A.2d 295 (1970) ("the doctrine of sovereign immunity is not only applicable to the State, itself, as a governmental agency, but is also applicable to its agencies and instrumentalities, including its municipal political sub-divisions"). As the attached Declarations state, compliance is impossible for WORTH-A-SHOT and that may be true as well for the rest of the plaintiff dealers who must secure the consent of their landlords in order to comply with the exterior security requirements imposed by the Bill. See Section 12-6-106(b)(1). The Declarations of all the dealers make plain that compliance is also so expensive that the dealers may well be forced to go out of business for that reason alone. A preliminary injunction would give these plaintiffs an opportunity

to fully litigate the merits of their claims without being shut down by the County as of August 23, 2022. "Damocles's sword does not have to actually fall on all [plaintiffs] before the court will issue an injunction." *League of Women Voters of the United States v. Newby,* 838 F.3d 1, 8-9 (D.C. Cir. 2016).

If Bill 109-21 is invalid, as plaintiffs contend, all those compliance costs and expenses would have been wasted or the plaintiffs would have gone out of business unnecessarily. By any measure, these are irreparable injuries warranting immediate relief well prior to the effective date of Bill 109-21. See, e.g., *DMF Leasing, Inc. v. Budget Rent-A-Car of Maryland*, 161 Md.App. 640, 646, 871 A.2d 639 (2005) ("Even assuming, as the trial judge concluded here, that damages were readily ascertainable, we hold that the loss of the movant's business constitutes irreparable injury under our injunctive relief analysis.") (collecting cases). After all, one of the principal purposes of preliminary relief is to maintain "the status quo between parties until the issues in contention are fully litigated." *Eastside Vend Distributors, Inc. v. Pepsi Bottling Grp., Inc.*, 396 Md. 219, 224, 913 A.2d 50 (2006). See also *State Dept. of Health and Mental Hygiene*, 281 Md. at 558 ("the primary justification for the issuance of a preliminary injunction is to prevent irreparable injury 'so as to preserve the court's ability to render a meaningful decision on the merits'") (citation omitted).

Finally, a preliminary injunction is in the public interest. This factor is generally considered less important than whether the plaintiff has shown irreparable injury and a likelihood of success on the merits. See *Nken v. Holder*, 556 U.S. 418, 434 (2009) (noting that these two factors are the "most critical"). As detailed above, this case involves multiple constitutional rights of plaintiffs under the Maryland Constitution. Bill 109-21 also implicates federal constitutional rights under the Second Amendment. The public interest is served, as a matter of law, by enjoining the

unconstitutional and *ultra vires* actions of a locality. See, e.g., *Legend Night Club v. Miller*, 637 F.3d 291, 303 (4th Cir. 2011) ("upholding constitutional rights is in the public interest"). "[A] state is 'in no way harmed by issuance of a preliminary injunction which prevents the state from enforcing restrictions likely to be found unconstitutional. If anything, the system is improved by such an injunction.'" *Giovani Carandola, Ltd. v. Bason*, 303 F.3d 507, 521 (4th Cir. 2002) (citation omitted). See also *Elrod v. Burns*, 427 U.S. 347, 373 (1976) (plurality opinion) ("[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury") (citation omitted). There is certainly no public interest associated with County legislation that is an impermissible "general law," or is expressly or impliedly preempted by State law or is so vague that it fails to provide adequate notice or guidance to enforcing officials.

CONCLUSION

For all the foregoing reasons, the County's motion to dismiss and alternative motion for summary judgment should be denied. For the same reasons, plaintiffs' motion for summary judgment or alternative motion for a preliminary injunction should be granted.

Respectfully submitted,

/s/ Mark W. Pennak

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Dated: April 4, 2022

IN THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY, MARYLAND

MARYLAND SHALL ISSUE, INC., *et al.*
9613 Harford Rd., Ste C #1015
Baltimore, MD 21234
Plaintiffs,

v. **Case No. C-02-CV-22-000217**

ANNE ARUNDEL COUNTY, MARYLAND
44 Calvert Street
Annapolis, MD 21401
Defendant.

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that on April 4, 2022, a copy of the following filings:

1. Plaintiffs' Motion For Summary Judgment And Alternative Motion For A Preliminary Injunction;

2. Opposition Of Plaintiffs To Defendant's Motion To Dismiss And For Summary Judgment And Memorandum In Support Of Plaintiff's Motion For Summary Judgment And Alternative Motion For A Preliminary Injunction; and

3. Plaintiffs' Motion For Expedited Hearing And Decision,

were served on the following counsel for defendant Anne Arundel County via the MDEC e-filing system:

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