

1 <https://bit.ly/3C7rgEE>. A copy of HB 425, is attached. As detailed below, SB 387/HB 425 creates
2 specific deadlines for compliance by existing owners of privately made firearms (“PMF”) that are
3 regulated by Bill 4-21. Bill 4-21, which defines a PMF to be a scary “ghost gun,” Section 57-1(2),
4 regulates such a PMF in a manner that is wildly inconsistent with this newly enacted, State-wide
5 legislation. As detailed below, a prompt decision on the pending motions is needed as soon as
6 possible to allow the full implementation of SB 387/HB 425 in Montgomery County.

7 **II. BILL 4-21 IS INCONSISTENT WITH SB 387/HB 425**

8 SB 387/HB 425 creates a new subtitle 7 in Title 5 of the Public Safety article of the
9 Maryland Code and regulates the possession of PMFs in ways that are incompatible and in direct
10 conflict with the regulation of PMFs by Bill 4-21. This new legislation thus makes clear that Bill
11 4-21 is not a “local law” within the meaning of Article XI, § 3 of the Maryland Constitution, as
12 alleged in Count I of the Complaint. SB 387/HB 425 impliedly preempts local regulation of PMFs
13 and is also violative of the Express Powers Act, MD Code, Local Government, § 10-206, as alleged
14 in Count II, because Bill 4-21 is “inconsistent” with and otherwise “in conflict with public general
15 law” established by SB 387/HB 425. (Id.).

16 The conflicts between Bill 4-21 and SB 387/HB 425 are many and stark. First, Bill 4-21
17 bans the mere possession of an existing PMFs throughout Montgomery County as of July 16, 2021,
18 the effective date of the Bill. See Section 57-11(a) of the Montgomery County Code, as amended
19 by Bill 4-21. In contrast, SB 387/HB 425 creates two separate regulatory approaches to PMFs.
20 Under the provisions relating to **sales and purchases**, SB 387/HB 425 provides that “a person
21 may not purchase, receive, sell, offer to sell, or transfer an unfinished frame or receiver unless it
22 is required by federal law to be, and has been, imprinted with a serial number by a federally
23 licensed firearms manufacturer or federally licensed firearms importer in compliance with all

1 federal laws and regulations applicable to the manufacture and import of firearms.” See Section 5-
2 703(a). This provision goes into effect on June 1, 2022. See Section 4 of SB 387/HB 425.

3 SB 387/HB 425 takes a different approach to **possession** of PMFs by existing owners. In
4 contrast to the flat ban on possession enacted by Bill 4-21, SB 387/HB 425 allows existing owners
5 of PMFs to lawfully retain possession if the PMF is serialized by a federal firearms licensee by
6 March 1, 2023, in accordance with federal law. See Section 5-703(b)(2)(i). As explained below,
7 new federal regulations just published by the ATF in final form will require federal licensees to
8 mark PMFs using a specific marking protocol involving the use of the licensee’s abbreviated
9 license number. Alternatively, SB 387/HB 425 also provides that existing owners may have their
10 existing PMFs serialized by a federal firearms licensee with a marking system that uses the owner’s
11 zip code, initials, and another unique number. See Section 5-703(b)(2)(ii). Under the first
12 alternative, the owner need not register the PMF with State Police, as the federal licensee’s ATF
13 number will provide a means of ensuring traceability in much the same manner as firearms are
14 currently traceable. Under the second alternative, such registration is required, thereby ensuring
15 traceability in that manner. See Section 5-703(b)(2)(ii)(2).

16 SB 387/HB 425 also allows a non-licensee to continue to manufacture a firearm for
17 personal use, providing in Section 5-703(b)(1)(iii), that the ban on possession of an unserialized
18 firearm, otherwise imposed by the bills, does not apply to possession of an unfinished frame or
19 receiver by a person who made the unfinished frame or receivers “without the use of any
20 prefabricated parts.” See Section 5-703(b)(1)(iii). Such a person has 30 days in which to obtain a
21 serial number from a federal licensee in accordance with the marking protocols set out in Bill
22 387/HB 425. Similarly, SB 387/HB 425 regulates only items that have “reached a stage of
23 manufacture where it may readily be completed, assembled, or converted to be used as the frame

1 or receiver of a functional firearm” and thus becomes an “unfinished frame or receiver” as thus
2 defined in the bill in Section 5-701(h). No serialization or registration is required prior to that time.

3 This provision limits the reach of the bills to match the reach of the federal law.

4 SB 387/HB 425 requires the Maryland State Police to create “a system to register firearms”
5 that are imprinted in accordance with the provisions of SB 387/HB 425. See Section 5-704(a). SB
6 387/HB 425 protects such registration information from public disclosure (Section 5-704(b)), and
7 requires the Governor to include in the annual budget an appropriation of at least \$150,000 in order
8 “to fund the registration activities” conducted by the State Police (Section 5-704(c)). In contrast,
9 Bill 4-21 criminalizes the possession of all unfinished frames or receivers, regardless of stage of
10 manufacture. See Section 57-1(2) (defining “ghost gun” to include “an unfinished frame or
11 receiver”); Section 57.11(a) (banning the sale, transfer, possession or transport of a “ghost gun”).
12 Yet, in stark contrast to SB 387/HB 425, Bill 4-21 makes no attempt to define what constitutes an
13 “unfinished frame or receiver.” Bill 4-21 contains no provision that would allow an owner to
14 serialize or register an unfinished frame or receiver or to continue to manufacture firearms for
15 personal use. Bill 4-21 is plainly inconsistent with the elaborate regulatory and registration system
16 created by SB 387/HB 425.

17 SB 387/HB 425 also expressly exempts from its coverage the sale, transfer or delivery, or
18 possession of an unserialized firearm by a federal firearms licensee, such as plaintiff Engage
19 Armament. See Section 5-702(2). Bill 4-21 has no such exemption. Bill 4-21 thus makes it legally
20 impossible for a federal licensee in the County, including Engage Armament, to provide the
21 serialization services expressly allowed and contemplated by SB 387/HB 425. See Section 5-
22 703(b). Similarly, under SB 387/HB 425, an owner of a PMF is free to sell the unserialized firearm
23 to a federal licensee. (Id.). That is legally impossible under Bill 4-21, as the Bill bans both the sale

1 and the possession of a “ghost gun,” including an “unfinished frame or receiver.” See Section 57-
2 11(a).

3 As noted, Bill 4-21 purports to ban “unfinished frames or receivers,” but never defines the
4 term, thus creating an extraordinarily vague criminal law. See Plaintiffs Memo. In Support of
5 Motion for Partial Summary Judgment at 44. In contrast, SB 387/HB 425 sets forth a specific
6 definition for this term in Section 5-701(h), and that definition is quite similar to the federal
7 definition of a “firearm” found in 18 U.S.C. § 921(a)(3). SB 387/HB 425 then adds further content
8 to that definition by expressly providing that the provisions of SB 387/HB 425 are to be “construed
9 in a manner that is consistent” with new federal ATF regulations that define “frame or receiver”
10 in greater detail. See Section 3 of SB 387/HB 425. Those federal ATF regulations became final on
11 April 11, 2022. See <https://bit.ly/3uzgswM>. These new federal regulations also impose very
12 specific requirements on federal firearms licensees (including gunsmiths) to serialize PMFs that
13 may come into their possession. See, e.g., 27 C.F.R. § 478.92 and § 479.102, as amended by the
14 new rule. Thus, SB 387/HB 425 was designed to work in conjunction with these provisions of
15 federal law. The bans imposed by Bill 4-21 are utterly untethered to federal law.

16 Other differences are also apparent. For example, Bill 4-21 purports to ban the sale, transfer,
17 possession, and transport of “major components” of firearms. See Section 57-11(a). SB 387/HB
18 425 does not purport to regulate “major components” (other than a frame or receiver) at all. Under
19 Bill 4-21, the ban on components would prevent a law-abiding resident of the County from
20 building a firearm for personal use by using a fully **serialized** frame or receiver, which are
21 available from federal firearms licensees throughout the United States. Under federal and State
22 law, such a use of a serialized receiver means that the firearm is not a “ghost gun” and is thus
23 perfectly legal under SB 387/HB 425 and federal law. Yet, the manufacture of the same serialized

1 firearm would be impossible under Bill 4-21 because of Bill 4-21's bans on "components." See
2 Plaintiff's Memo. In Opposition at 25. Bill 4-21 would likewise ban a federally licensed firearms
3 manufacturer, such as plaintiff Engage Armament, from using components to build an otherwise
4 perfectly lawful firearm that the licensee is fully entitled to manufacture under federal and State
5 law. (Id.). By intentionally not regulating "components," SB 387/HB 425 avoids these absurd
6 results.

7 Bill 4-21 imposes criminal sanctions for mere possession of a "ghost gun" without regard
8 to the intent or knowledge of the possessor and thus creates strict criminal liability for mere
9 possession. Such strict liability imposed by vague legislation is highly questionable under the Due
10 Process Clause of the Fourteenth Amendment. See, e.g., *Lawrence v. State*, 475 Md. 384, 420-21,
11 257 A.3d 588 (2021) (taking pains to expressly "signal" the General Assembly that the ban on
12 carrying a handgun "about" the person found in MD Code Criminal Law, § 4-203(b)(1), is
13 unconstitutionally vague, and that the Court would strike it down on that basis in the next
14 appropriate case). See also Plaintiffs' Memo. In Support of Motion for Partial Summary Judgment
15 at 38 (discussing *City of Chicago v. Morales*, 527 U.S. 41, 54 (1999)).

16 SB 387/HB 425, in contrast, contains an express *mens rea* provision, providing that the ban
17 on possession "does not apply to possession of a firearm unless a person knew or reasonably should
18 have known that the firearm was not imprinted with a serial number as described under this
19 subsection." Section 5-703(b)(1)(i). Similarly, SB 387/HB 425 provides that the ban on possession
20 "does not apply to persons who received the firearm through inheritance," as long as such person
21 gets the firearm serialized by a federal licensee within 30 days of such receipt in accordance with
22 serialization provisions in the bills. See Section 5-703(b)(ii). Bill 4-21 contains no such provision
23 allowing possession by inheritance, much less a provision allowing continued possession through

1 serialization. In sum, Bill 4-21 bans the very types of possession expressly permitted by SB
2 387/HB 425, and, by banning possession by a federal licensee, effectively bans serialization
3 services by a federal licensee, as allowed and specified by SB 387/HB 425.

4 For the foregoing reasons, plaintiffs respectfully submit that SB 387/HB 425 has occupied
5 the field of PMF regulation in Maryland and thus has preempted Bill 4-21. See Plaintiffs' Memo.
6 In Support of Motion for Partial Summary Judgment at 19; Plaintiffs' Memo. In Opposition at 17.
7 This legislation by the General Assembly also necessarily embodies a recognition that the
8 regulation of PMFs is a matter of State-wide concern. Bill 4-21 thus "indirectly affects matters of
9 significant interest to the entire state" and is thus not a "local law" within the meaning of the
10 Maryland Constitution. *Cole v. Secretary of State*, 249 Md. 425, 434, 240 A.2d 272 (1968). See
11 Plaintiffs' Memo. In Opposition at 21-26. At the very least, Bill 4-21 is "inconsistent" with SB
12 387/HB 425 within the meaning of the Express Powers Act and is thus invalid on that basis as well.
13 (*Id.* at 6-21).

14 SB 387/HB 425 goes into effect on June 1, 2022. See Section 4. As noted, existing owners
15 have until March 1, 2023, to obtain serialization services from federal licensees. That clock is now
16 ticking. Yet, Bill 4-21 makes it impossible for existing owners to obtain serialization services in
17 Montgomery County, as it bans mere possession by owners and federal firearms licensees alike. It
18 is thus urgent that Bill 4-21 be struck down as soon as possible to allow SB 387/HB 425 to work
19 as intended by the General Assembly. Plaintiffs again respectfully request an expedited hearing
20 and a decision on these pending motions at the earliest practicable date.

1 **CONCLUSION**

2 For all the foregoing reasons, this Court should grant expedited hearing and decision on
3 the pending motions. Plaintiffs’ motion for partial summary judgment should be granted and
4 defendant’s motion to dismiss and for summary judgment should be denied.

5 Respectfully submitted,

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15 Dated: April 14, 2022

1 **CERTIFICATE OF SERVICE**

2 The undersigned counsel hereby certifies that on April 14, 2022, a copy of the foregoing
3 Plaintiffs' Supplemental Memorandum Regarding Enactment Of Senate Bill 387 And House Bill
4 425 Into Law and Motion for Expedited Hearing and Decision was served on the following counsel
5 for defendant Montgomery County via the MDEC e-filing system:

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