

**IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY,  
MARYLAND**

MARYLAND SHALL ISSUE, INC., <i>et al.</i> ,	*	
	*	
Plaintiffs	*	
	*	
v.	*	Case No.: 485899V
	*	
MONTGOMERY COUNTY, MARYLAND	*	
	*	
Defendant	*	

**DEFEDANT’S REPLY TO PLAINTIFFS’ SUPPLEMENTAL MEMORANDUM  
REGARDING ENACTMENT OF SENATE BILL 387  
AND HOUSE BILL 425 INTO LAW**

**INTRODUCTION**

In response to the increasing number of ghost guns recovered by law enforcement, last month the General Assembly enacted Senate Bill 387 (2022 Md. Laws ch. 19) (**Ex. H**)<sup>1</sup> and House Bill 425 (2022 Md. Laws ch. 18) (**Ex. I**). The bills are identical. Consistent with new federal firearms regulations, 87 Fed. Reg. 24652-24749 (eff. Aug. 24, 2022), this new state law expands the definition of “firearm” to include an unfinished frame or receiver and thereby closes the loophole that allowed unlicensed individuals to sell “do-it-yourself” unserialized (ghost) guns without a background check. These unfinished frames or receivers will be subject to the same rules applicable to other firearms.

As discussed below, Bill 4-21 is not preempted by, or in conflict with, SB 387/HB 425.

**SB 387/HB 425**

Effective June 1, 2022, SB 387/HB 425 prohibits a person from purchasing, receiving, selling, offering to sell, or transferring an “unfinished frame or receiver” or a firearm unless it serialized by a federal firearms licensee. Md. Code Ann., Public Safety (PS) § 5-703(a). The

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<sup>1</sup> County Exs. A - G are attached to its Mot. Summ. J.

term “firearm” is broadened to include an “unfinished frame or receiver,” PS § 5-101(h)(iii), which in turn is defined as an article that “has reached a stage in manufacture where it may readily be completed, assembled, or converted to be used as the frame or receiver of a functional firearm.” § 5-701(h). This definition is consistent with the new federal firearms regulations.

Effective March 1, 2023, a person must not possess a firearm (now including an unfinished frame or receiver) unless it either serialized in accordance with federal law or imprinted with the owner’s zip code, initials, and another unique number, and then registered with the State Police. PS § 5-703(b)(2). A person who either receives an unserialized firearm through inheritance or manufactures an unserialized firearm without the use of any prefabricated parts, has 30 days to have that firearm serialized.

## ANALYSIS

### Conflict

“The crux of conflict preemption is that a political subdivision may not prohibit what the State by general public law has permitted, but it may prohibit what the State has not **expressly** permitted. Conflict preemption occurs when a local law prohibits an activity which is intended to be permitted by state law, or permits an activity which is intended to be prohibited by state law.” *Montgomery Cty. v. Complete Lawn Care, Inc.*, 240 Md. App. 664, 688 (2019) (emphasis in original) (internal quotations and citations omitted). Maryland courts have thus long followed the concurrent powers doctrine, committed to the principle that “[a]dditional regulation by [a local] ordinance does not render [the local ordinance] void” even though the state may have enacted statutes regulating a field. *Rosberg v. State*, 111 Md. 394 (1909) (citation omitted); *accord E. Tar Prods. Corp. v. State Tax Comm’n of Maryland*, 176 Md. 290, 296-97 (1939) (observing that a local law requiring “more than the [state] statute requires creates no conflict”).

Historically, Maryland has employed two tests to determine whether state law conflict preempts local law: the functional test and the verbal test. Under the functional test, a local law is not conflict preempted if it advances, or is consistent with, the state law’s purposes.<sup>2</sup> See *Mayor & City Council of Balt. v. Hart*, 395 Md. 394, 409 (2006); *Caffrey v. Dep’t of Liquor Control for Montgomery Cty.*, 370 Md. 272, 306-07 (2002) (citing *Mayor & Aldermen of City of Annapolis v. Annapolis Waterfront Co.*, 284 Md. 383, 393 (1979) (“Municipalities are free to provide for additional standards and safeguards in harmony with concurrent state legislation.”)). Under the verbal test, a local law is conflict preempted if it prohibits conduct that the state law expressly permits. *City of Balt. v. Sitnick*, 254 Md. 303, 317 (1969).

In 2006, the Court of Appeals indicated in *Hart* that the functional test has “tak[en] priority over the verbal test under the conflict rule.” 395 Md. at 409 (quoting J. Scott Smith, *State and Local Legislative Powers: An Analysis of the Conflict and Preemption Doctrines in Maryland*, 8 U. Balt. L. Rev. 300, 308-09 (1979)). Regardless of which test is employed, Bill 4-21 does not conflict with state law.

A decision upholding Bill 4-21 would fit comfortably within a century-long line of Court of Appeals’ decisions upholding local laws that advanced, or were consistent with, the purposes of Maryland law. In a 1909 case, the Court of Appeals upheld a local law prohibiting the sale of cocaine and imposing harsher penalties than Maryland law because “further and additional penalties may be imposed by [local law], without creating inconsistency.” *Rossberg v. State*, 111 Md. 394 (1909). And in 1922, the Court of Appeals upheld a local law exempting emergency vehicles from yielding, even though a state law required them to do so, because “it was not the purpose of the municipality to derogate in any respect from the general rule laid down by the

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<sup>2</sup> But a local law is not in conflict with state law merely because it would frustrate some underlying state purpose. *Complete Lawn Care, Inc.*, 240 Md. App. at 688.

[General Assembly], but only to grant certain priorities when human life might be at stake.”  
*State v. Brown*, 142 Md. 27 (1922).

In 1969, the Court of Appeals upheld a local law setting a higher minimum wage within the locality than did state law because the locality sought to achieve the same goal as the state—prohibiting the payment of substandard wages. *Sitnick*, 254 Md. at 307, 321 (citation omitted). In 1979, the Court upheld a city charter provision permitting port wardens to consider environmental factors when approving wharf construction as consistent with state law, even though state law did not list those factors as considerations, because the purpose of both laws was to allow port wardens to regulate construction on the waterways. *Annapolis Waterfront Co.*, 284 Md. at 392. Finally, in 2006, the Court of Appeals upheld a local law requiring emergency vehicles to stop at red traffic signals, even though state law permitted them to proceed after slowing down, because the local law advanced the state law’s underlying safety purposes. *Hart*, 395 Md. at 409-10.

Putting aside that Bill 4-21 is expressly authorized by CL § 4-209(b)(1) (which should end the argument altogether), Bill 4-21 advances the goal of SB 387/HB 425—eliminating the dangers posed by unserialized ghost guns. SB 387/HB 425 attacks the problem directly by requiring those guns to be serialized and treated like other firearms. Bill 4-21 does this by regulating those remaining unserialized guns with respect to minors and within 100 yards of or in a place of public assembly. As discussed below, the General Assembly identified Bill 4-21 as complementary local legislation when it was considering SB 387/HB 425.

Neither does Bill 4-21 conflict with SB 387/HB 425 under the verbal test. Even explicit state statutory exemptions permitting specific conduct have not been interpreted by Maryland courts as express permission—demonstrating the high degree of verbal conflict necessary to

preempt local law. For example, the Court of Appeals has held that Maryland employment laws, which exempt some employers from state non-discrimination laws, do not prevent local governments from imposing their own non-discrimination requirements on the very employers the state exempts. *Nat'l Asphalt Pavement Ass'n, Inc. v. Prince George's Cty.*, 292 Md. 75, 79 (1981) (upholding local blanket non-discrimination prohibition despite a state exemption for employers with fewer than 15 employees); *Montrose Christian School Corp. v. Walsh*, 363 Md. 565, 581 (2001) (likewise for religious entities). The Court reasoned that the exempted employers were “not permitted by the statute to discriminate in their employment practices; they simply [were] not covered.” *Nat'l Asphalt Pavement Ass'n, Inc.*, 292 Md. at 79.

There is no verbal conflict here. County law, including Bill 4-21, does not address the licensing of firearms dealers, the serialization of firearms, or the necessity of a background check. Bill 4-21 regulates ghost and undetectable guns with respect to **minors** and within 100 yards of or in a **place of public assembly**, precisely as authorized by the General Assembly in Md. Code Ann. Crim. Law (CL) § 4-209(b)(1). Thus, Bill 4-21 does not ban or criminalize the possession of unserialized ghost guns “throughout Montgomery County,” as Plaintiffs suggest. Pls.’ Supp. Mem. 2 & 4. Neither does Bill 4-21 make it “legally impossible” for the owner of a ghost gun to transport that that gun to a federal licensee in the County to either sell it (to the federal licensee) or have it serialized. Pls.’ Supp. Memo. 4-5.<sup>3</sup> Both the state and county bills seek to enhance public safety by reducing the number of unserialized ghost guns. Because the new state law requires that unfinished frames or receivers be serialized (like other firearms), there will hopefully be an ever-shrinking number of unserialized ghost guns subject to Bill 4-21.

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<sup>3</sup> Plaintiffs also suggest that Bill 4-21 conflicts with SB 387/HB 425 because the former bans the sale, transfer, possession, and transportation of “major components” of firearms while the latter “does not purport to regulate ‘major components.’” Pls.’ Supp. Mem. 5. Putting aside Plaintiffs’ inaccurate characterization of Bill 4-21 (it does not ban major components), there can be no conflict where local address a matter unaddressed by state law.

## Preemption

The new state law did not preempt the County's authority under CL § 4-209(b)(1). As the County noted in its Mot. Summ. J. 35-36, because "the General Assembly is presumed to be aware of existing local law when it legislates," the legislature's failure to "address the interaction of its statutes with pre-existing local ... laws suggests that it intended no change in the applicability of the local laws." *Ad + Soil, Inc. v. Cty. Comm'rs of Queen Anne's Cty.*, 307 Md. 307, 333 (1986); *see also City of Balt. v. Sitnick*, 254 Md. 303, 322 ("There is a presumption of statutory construction that the Legislature acts with the knowledge of existing laws on the subject matter under consideration."). As in *Sitnick*, SB 387 and HB 425 "included no repealer of the [local] law[s] nor, as a matter of fact, the standard clause repealing all inconsistent laws." 254 Md. at 322. This failure to grapple with preexisting local law "is an important factor indicating that there was no intent by the General Assembly to preempt the field." *Nat'l Asphalt Pavement Ass'n, Inc. v. Prince George's Cty.*, 292 Md. 75, 79 (1981). *See also Mayor and Aldermen of City of Annapolis v. Annapolis Waterfront Co.*, 284 Md. 383, 393 (1979). This failure to "mention[] preexisting local ... ordinances [is] a clear indication that the General Assembly did not intend to preempt these local laws." *Bd. of Child Care of Balt. Annual Conference of the Methodist Church, Inc. v. Harker*, 316 Md. 683, 698 (1989).

Reliance upon presumption is not necessary here, as the General Assembly was told of, and explicitly acknowledged, preexisting County law regulating ghost and undetectable guns. And, aware of that local regulation, the General Assembly chose not to revisit the grant of local authority in CL § 4-209(b)(1) or preempt the County's local regulation.

In his oral testimony supporting HB 425 before the House Judiciary Committee, the

County Executive made explicit reference to the County’s recent enactment of County Bill 4-21<sup>4</sup> and noted that, although the law was under challenge (*i.e.*, this lawsuit), the County was “energized” by momentum in Annapolis on ghost guns.<sup>5</sup>

The County submitted written testimony in support of both SB 387 (**Ex. J**) and HB 425 (**Ex. K**), noting the increasing number of ghost guns being recovered by law enforcement officials in the County and the use of ghost guns in some recent County shootings.<sup>6</sup>

The danger of these deadly weapons is that they can be easily assembled from components bought online with no required background check, have no serial numbers, and are, therefore, untraceable. These fully functional firearms are often difficult to identify as guns due to their shape or configuration and can evade metal detectors or x-ray machines creating a potential threat to public safety. Tragically, last month’s shooting at Magruder High School involved a 17-year-old using a 9 mm ghost gun purchased online to shoot and seriously harm a fellow student inside the school. And last summer at a recreation center in Germantown, a ghost gun was used by a 14-year-old to fatally shoot a 20-year-old. While it’s not fully known how many ghost guns are used in crimes, Montgomery County Department of Police reports that the number is rising. In 2021, 70 ghost guns were recovered from crime scenes in the County- up from 16 ghost guns in 2019 and 56 ghost guns in 2020.

With increasing incidents of gun violence in Maryland, Montgomery County supports stricter gun safety laws to include untraceable and undetectable firearms. We urge the Committee to adopt a favorable report on HB 425.

The Senate Judicial Proceedings Committee Floor Report (**Ex. O**), as well as the Department of Legislative Services Fiscal Notes that accompanied SB 387 (**Ex. P**) and HB 425 (**Ex. Q**) reveal that, like Bill 4-21, the state bills were intended to address the increasing number

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<sup>4</sup> The County Executive’s testimony, available on the General Assembly website, begins around 1:06:53. [https://mgaleg.maryland.gov/mgawebsite/Committees/Media/false?cmte=jud&ys=2022RS&clip=JUD\\_2\\_9\\_2022\\_meeting\\_1&url=https%3A%2F%2Fmgahouse.maryland.gov%2Fmga%2Fplay%2F9205a485-2ac3-4674-bfe0-a1a38317bad2%2F%3Fcatalog%2F03e481c7-8a42-4438-a7da-93ff74bdaa4c%26playfrom%3D3215343](https://mgaleg.maryland.gov/mgawebsite/Committees/Media/false?cmte=jud&ys=2022RS&clip=JUD_2_9_2022_meeting_1&url=https%3A%2F%2Fmgahouse.maryland.gov%2Fmga%2Fplay%2F9205a485-2ac3-4674-bfe0-a1a38317bad2%2F%3Fcatalog%2F03e481c7-8a42-4438-a7da-93ff74bdaa4c%26playfrom%3D3215343).

<sup>5</sup> The County Executive also testified in support of SB 387 before Senate Judicial Proceedings Committee. [https://mgaleg.maryland.gov/mgawebsite/Committees/Media/false?cmte=jpr&ys=2022RS&clip=JPR\\_2\\_16\\_2022\\_meeting\\_1&url=https%3A%2F%2Fmgahouse.maryland.gov%2Fmga%2Fplay%2Ff8abc56e-c69e-41ba-ba75-3485182db38f%2F%3Fcatalog%2F03e481c7-8a42-4438-a7da-93ff74bdaa4c%26playfrom%3D9760051](https://mgaleg.maryland.gov/mgawebsite/Committees/Media/false?cmte=jpr&ys=2022RS&clip=JPR_2_16_2022_meeting_1&url=https%3A%2F%2Fmgahouse.maryland.gov%2Fmga%2Fplay%2Ff8abc56e-c69e-41ba-ba75-3485182db38f%2F%3Fcatalog%2F03e481c7-8a42-4438-a7da-93ff74bdaa4c%26playfrom%3D9760051).

<sup>6</sup> The County’s Victim Services Advisory Board also supported SB 387. **Ex. L**. The attached witness signup sheets, printed from the General Assembly’s website, also evidence the receipt of this written and oral testimony for SB 387 (**Ex. M**) and HB 425 (**Ex. N**) (highlighting added to identify County speakers).

of unserialized ghost guns recovered by law enforcement. And they also noted complementary local legislation that has been enacted to address the problem, including Bill 4-21 (emphasis added).

**Background:** According to the U.S. Department of Justice, between 2016 and 2020, more than 23,000 ghost guns were recovered by law enforcement from potential crime scenes, including 325 in connection with homicides and attempted homicides. In November 2020, the Baltimore Sun reported that between 2016 and 2019, more than 12,000 build kits were shipped to Maryland, with total sales of the kits exceeding \$1.0 million. The Baltimore Sun further reported that the Baltimore City Police Department recovered 126 privately made firearms in 2020 compared to 29 recovered in 2019, and that nearly one-quarter of such firearms recovered were from individuals under the age of 21.

Eight states (California, Connecticut, Hawaii, Nevada, New Jersey, New York, Rhode Island, and Washington) and the District of Columbia have enacted laws regulating privately made firearms to varying degrees. California and Connecticut have enacted laws that require privately made firearms to be registered and marked with a serial number obtained from a governmental agency within each state. Nevada and New Jersey require serialization of unfinished frames and receivers by federally licensed firearms manufacturers and importers. The District of Columbia passed legislation in 2020 to ban build kits and specifically the possession of unfinished frames and receivers and untraceable firearms.

Some cities and local jurisdictions have also started to implement laws to address privately made firearms. In August 2021, San Diego became the first city in California to prohibit the sale of unserialized frames and receivers, and San Francisco passed similar legislation shortly thereafter. **In Maryland, Montgomery County passed legislation in April 2021 to restrict the access of privately made firearms to minors and in places of public assembly within the county.**

It is self-evident that SB 387/HB 425 does not expressly preempt Bill 4-21 or any local regulation of firearms. Neither does it impliedly preempt Bill 4-21. Indeed, the record demonstrates that the County actively supported SB 387/HB 425 and that the General Assembly saw Bill 4-21 as a legitimate legislative response to the alarming proliferation of unserialized ghost guns.

Respectfully submitted,

JOHN P. MARKOV'S  
ACTING COUNTY ATTORNEY

*/s/ Patricia Lisehora Kane*

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Patricia Lisehora Kane, Chief  
Division of Litigation  
[patricia.kane@montgomerycountymd.gov](mailto:patricia.kane@montgomerycountymd.gov)  
CPF ID No. 8011010189

*/s/ Edward B. Lattner*

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Edward B. Lattner, Chief  
Division of Government Operations  
[edward.lattner@montgomerycountymd.gov](mailto:edward.lattner@montgomerycountymd.gov)  
CPF ID No. 8612300002

*/s/ Sean C. O'Hara*

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Sean C. O'Hara  
Associate County Attorney  
[sean.ohara@montgomerycountymd.gov](mailto:sean.ohara@montgomerycountymd.gov)  
CPF ID No. 1212120337

*Attorneys for Defendant Montgomery  
County, Maryland*  
101 Monroe Street, Third Floor  
Rockville, Maryland 20850-2540  
(240) 777-6700  
(240) 777-6705 Fax

### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 12<sup>th</sup> day of May 2022, a copy of the foregoing was electronically served through the MDEC to:

Mark W. Pennak  
Maryland Shall Issue, Inc.  
9613 Harford Rd., Ste. C #1015  
Baltimore, MD 21234-21502  
[mpennak@marylandshallissue.org](mailto:mpennak@marylandshallissue.org)

*/s/ Edward B. Lattner*

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Edward B. Lattner, Chief  
Division of Government Operations

Def.'s Reply to Pls.' Supp.  
21-003732