

1 administrative appeal to a county board of appeals. Both the Court of Special Appeals and Talbot
2 County Circuit Court sustained this administrative scheme. (474 Md. at 240-41). The Court of
3 Appeals reversed.

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5 In so holding, the Court of Appeals stated that “when a party is challenging the authority
6 of a local government to take a particular action, *it is important to strip away the labels* and
7 consider the particular governmental action that is sought to be undertaken.” *Id.* at 259 (emphasis
8 supplied). The Court of Appeals explained that it was critical to “identify the precise nature of the
9 governmental action in question,” and that the controlling inquiry was “whether the local
10 government ‘has the legal authority to undertake the action, and if so, whether the contemplated
11 action was correctly undertaken consistent with that grant of authority action in question.’” (*Id.* at
12 259-60) (quoting *K. Hovnanian Homes of Maryland, LLC v. Mayor of Havre de Grace*, 472 Md.
13 267, 292, 244 A.3d 1174 (2021). Applying this test, the Court of Appeals held that even though
14 Talbot County had the legal authority to impose civil fines and had the legal authority to regulate
15 the subject matter (*id.* at 265), the appeal procedures were nonetheless invalid under the Express
16 Powers Act because the county’s provisions were “inconsistent with the applicable provisions of
17 State law, which vest original jurisdiction in the courts for the adjudication of civil penalties
18 established by a charter county in the exercise of its express powers, as well as in the exercise of
19 additional powers authorized by [State law].” *Id.* at 269. In so holding, the Court applied the “plain
20 language” of State law. *Id.* at 271.

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24 The second decision is *K. Hovnanian Homes*, the case on which *Angel Enterprises* relied.
25 In that case, State law conditioned a municipality’s authority to enter into agreements upon the
26 enactment of an ordinance. The Court of Appeals held that the municipality’s failure to enact such
27 ordinance was fatal to its actions for that reason. See *K. Hovnanian Homes*, 472 Md. at 295. The
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1 Court also made clear that “where the General Assembly has provided a municipality with the
2 authority to exercise an express power by ordinance, the ordinance ‘may not conflict with State
3 law.’” *K. Hovnanian Homes*, 472 Md. at 291 (quoting MD Code, Local Government, § 5-203(b)).

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5 The third, and most recent decision, is *Lyles v. Santander Consumer USA Inc.*, --- Md. ---,
6 --- A.3d ---, 2022 WL 1513656 (May 13, 2022). There, the Court of Appeals emphasized that
7 courts are to “read the statute as a whole to ensure that no word, clause, sentence or phrase is
8 rendered surplusage, superfluous, meaningless or nugatory.” *Lyles*, 2022 WL 1513656 at *6
9 (citations and internal quotes omitted). *Lyles* also stressed that the inquiry into legislative intent is
10 primarily controlled by statutory text, stating “[w]e assume that the legislature's intent is
11 expressed in the statutory language and thus our statutory interpretation focuses primarily on the
12 language of the statute.” (*Id.*) (quoting *Berry v. Queen*, 469 Md. 674, 687, 233 A.3d 42 (2020)).
13 *Lyles* also notes that Maryland courts may consult the legislative history, but will give full effect
14 to the plain language of a statute if there is “[n]othing in the legislative history [that] indicates that
15 the General Assembly intended for [the State law] to be interpreted inconsistently with its plain
16 meaning.” (2022 WL at 1513656 at *8).

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19 These principles control the proper application of State law in this case. *Angel Enterprises*
20 makes clear that “labels” do not control and thus it does not matter whether the local ordinance
21 serves the same general “purpose” as State law. Rather, what matters under this controlling
22 precedent is whether the local governmental entity (1) has the power to regulate in a given area,
23 and (2) whether the local law is “inconsistent” or “in conflict” with State law. If the local law fails
24 either prong, then it is *ultra vires*. Full stop. *Lyles* makes clear that every part of a State law must
25 be given effect and that legislative intent is controlled by the plain meaning of the statutory
26 language, at least in the absence of strong indications to the contrary in the legislative history.
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1 Thus, in neither *Angel Enterprises* nor *K. Hovnanian Homes* did the Court of Appeals stop to
2 inquire as to whether the local law was consistent with the “purposes” of State law. The textual
3 inconsistency between State law and the local law was sufficient. *Lyles* likewise followed the plain
4 meaning of the statutory language. *Lyles*, 2022 WL at 1513656 at *8.

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6 For all the reasons set forth previously in plaintiffs’ memorandum supporting summary
7 judgment and in their opposition to defendant’s motion to dismiss or alternative motion for
8 summary judgment, the County lacks the authority under MD Code, Criminal Law, § 4-209, to
9 regulate State licensed firearms dealers in the manner imposed by Bill 109-21. That ends the
10 analysis under step one of *Angel Enterprises*. But even assuming *arguendo* that it does have some
11 authority, the County’s regulation of dealers must still not be “inconsistent” or “in conflict” with
12 State law, and that is true regardless of whether it shares the same general purpose of State law.
13 That is step two of the analysis required by *Angel Enterprises*. A “conflict” is shown where a
14 County “prohibit[s] something permitted by State legislation.” *Caffrey v. Department of Liquor*
15 *Control for Montgomery County*, 370 Md. 272, 305, 805 A.2d 268 (2002). See also *Rossberg v.*
16 *State*, 111 Md. 394, 74 A. 581, 584 (1909) (“ordinances which assume directly or indirectly to
17 permit acts or occupations which the state statutes prohibit, or to prohibit acts permitted by statute
18 or constitution, are under the familiar rule for validity of ordinances uniformly declared to be null
19 and void”).

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23 But a county law may still be “inconsistent” with State law (and thus fail), even though it
24 did not actually prohibit conduct permitted by State law. After all, the Express Powers Act bans
25 county laws “inconsistent” with State law, MD Code, Local Government, § 10-206(a), as well as
26 county laws “in conflict” with State law. (*Id.* § 10-206(b)). *Lyles* makes clear that both terms
27 (“conflict” and “inconsistent”) must be given independent meaning and effect so as neither term
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1 is rendered “surplusage, superfluous, meaningless or nugatory.” *Lyles*, 2022 WL 1513656 at *6.
2 The term “inconsistent” simply means “[l]acking agreement among parts; not compatible with
3 another fact or claim.” Blacks Law Dictionary (11th ed.). See also *Gomez v. Jackson Hewitt, Inc.*,
4 427 Md. 128, 172, 46 A.3d 443 (2012) (same).
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6 In this case, plaintiffs have shown that Bill 109-21 prohibits activities and conduct
7 permitted by State law and thus “conflicts” with State law in that Bill 109-21 would prohibit a
8 dealer from operating its business even though State law expressly permits that operation.
9 Plaintiffs have also shown that Bill 109-21 is “inconsistent” with the comprehensive regulatory
10 scheme created by State law and regulations for the licensure and operation of State firearms
11 dealers. In particular, Bill 109-21 is “inconsistent” and “in conflict” with the text of HB 1021, as
12 recently enacted by the General Assembly. See Plaintiffs’ Supplemental Memorandum
13 Concerning HB 1021, filed April 28, 2022. That legislation makes clear that the General Assembly
14 elected to take a different road to dealer security measures than that taken by the County. *Angel*
15 *Enterprises, K. Hovnanian Homes*, and *Lyles* confirm that no more is required to invalidate Bill
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17 109-21.
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19 CONCLUSION

20 This Court should grant plaintiffs’ motion for summary judgment or alternative motion for
21 a preliminary injunction, and deny defendant’s motion to dismiss and alternative motion for
22 summary judgment.
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24 Respectfully submitted,

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