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.

PLAINTIFFS' SUPPLEMENTAL MEMORANDUM ON MOOTNESS

Plaintiffs respectfully submit this supplemental memorandum on mootness in response to the proposed Anne Arundel County legislation that counsel for defendant, Anne Arundel County ("the County"), referenced during the May 24, 2022, Hearing in this matter. A copy of the proposed bill, as provided by County counsel, is attached as Exh. A. On June 21, 2022, almost a month after the May 24th hearing, a County Council member (Mr. Pruski) filed a "proposed" ordinance, Bill 70-22, that tracks the language submitted by County counsel at the May 24, 2022, hearing. A copy of Bill 70-22 is attached as Exh. B.

Bill 70-22 is not set for a hearing before the County Council until July 18, 2022, well after the July 11, 2022 hearing scheduled by this Court. On its face, Bill 70-22 "expires" September 24, 2022, and thus dies if not enacted into law prior to that date. If enacted and signed into law, Bill 70-22 would not become effective until 45 days from the date it becomes law. See Section 3 of Bill 70-22. The effective date of Bill 70-22, if enacted, could thus stretch into October or even November of 2022, well past the August 23, 2022, date that Bill 109-21 goes into effect as to current dealers, such as the plaintiff dealers in this case. It could even stretch past the October 23,

2022, date that counsel for the County as advised the Court that the County will begin enforcement of Bill 109-21 as to current dealers. At the May 24, 2022 hearing, County counsel suggested that this proposed legislation would moot this case. As detailed below, that assertion of mootness is wrong, even assuming that Bill 70-22 is actually enacted. The Court should accordingly reach and decide the merits of this case on the cross-motions for summary judgment presently pending before the Court.

I. THE PROPOSED COUNTY LEGISLATION

The proposed legislation (Bill 70-22) does not purport to repeal Bill 109-21, the ordinance challenged in this case by plaintiffs. Rather, the proposed legislation would, without making any substantive changes to the text, renumber the existing Sections 12-6-**1**01 through 12-6-**1**07 to be 12-6-**2**01 through 12-6-**2**07, and place these new Sections under the subtitle for "Dealers." Similarly, the proposed legislation would renumber existing Sections 12-6-**2**01 through 12-6-**2**07 to be Sections 12-6-**3**01 through 12-6-**3**07 and place these renumbered Sections into the "Gun Shows" subtitle. It would renumber Section 12-6-**3**01 to be new Section 12-6-**4**01 and place that renumbered section into subtitle "Enforcement." See Section 1 of the proposed legislation.

These changes would free up room for a new subtitle called "Effective Date Contingency," containing a new Section 12-6-101. That new Section 12-6-101 would provide that "[n]otwithstanding any other provision of law, this title shall become effective thirty (30) days following any final judicial or legislative action that voids or repeals the provisions of § 5-145.1 of the Public Safety Article of the Maryland Code." All these amended subtitles would fall under existing Title 6 of Article 12 of the County Code, which would remain captioned as "Security Measures For The Sale Of Firearms." The reference to Section 5-145.1 of the Public Safety Article

of the Maryland Code is to House Bill 1021, as enacted and codified. Section 3 of the proposed legislation provides that "this Ordinance shall take effect 45 days from the date it becomes law."

The proposed legislation appears to be a poorly thought out rush job. For example, the renumbering of section numbers in the proposed legislation would seemingly require the County to also change the cross-reference to Section "12-6-106" in current Section 12-6-103. However, nothing in the language of the proposed legislation expressly makes that change. Likewise, nothing in the proposed legislation purports to change the cross-reference to Section "12-6-105" in existing Section 12-6-202. And nothing in the proposed legislation purports to change the existing cross-reference to Section "12-6-104" in existing Section 12-6-203, or to the existing cross-reference to Section "12-6-205" in existing Section 12-6-202. These omissions suggest that the proposed legislation has not been carefully read or vetted.

The effective date provisions likewise appear poorly thought out. While the proposed legislation would renumber the codification of Bill 109-21, it would not change a word of substance in Bill 109-21, as previously codified. Rather, Title 6 of Article 12 of the County Code would merely be subject to new Section 12-6-101, which changes the "effective" date of "this title" (Title 6 of Article 12 of the County Code) so as to make "this title" contingent upon the continued validity of Section 5-145.1 of the Public Safety Article of the Maryland Code. Yet, nothing in the proposed legislation would actually change the effective date of Bill 109-21 for existing dealers. Specifically, nothing in the proposed legislation purports to amend or change Section 3 of Bill 109-21, which provides that a dealer "in existence" on or before the effective date of "**this Ordinance**" (February 24, 2022), and who would otherwise be subject to the requirements of "this title" shall comply with the requirements "of this title" within 180 days after "the effective date of **this Ordinance**." (Emphasis added). The reference to "this Ordinance" in Section 3 of Bill 109-

21 is, of course, to Bill 109-21, not to the ordinance that would be enacted by the proposed legislation. "[T]his title" refers to Title 6 of Article 12 of the Anne Arundel County Code into which the substantive provisions of Bill 109-21 were codified.

The contingency provisions of new Section 12-6-101 purport to suspend the operation of "this title" (Title 6) until and unless Section 5-145.1, is repealed or voided, at which time all of "this title" would spring back to life 30 days later. Section 3 of Bill 109-21 was not codified and is thus **not part** of "this title" of the County Code. That means the proposed legislation would have no effect on the effective date specified in Section 3 of Bill 109-21 for existing dealers. Stated differently, the 180-day period specified in Section 3 of Bill 109-21 would not be suspended by new Section 12-6-101, and thus that 180-day period would have quite likely be long expired by the time Section 5-145.1 is ever repealed or voided. Under new Section 12-6-101, dealers would have a mere 30 days to bring themselves into compliance with the resurrected provisions of "this title," not the 180 days asserted by County counsel during the May 24, 2022 Hearing. In short, if the intent of the proposed legislation was to give existing dealers an additional 180 days for compliance after Section 5-145.1 is repealed or voided, then the proposed legislation does not accomplish that end.

II. THE PROPOSED LEGISLATION DOES NOT MOOT THIS CASE

A. Controlling Principles

Maryland mootness law is jurisprudentially quite similar to federal mootness law, even though the Article III considerations of federal law do not obtain under Maryland law. The test for mootness under State law is whether "a case presents a controversy between the parties for which, by way of resolution, the court can fashion an effective remedy." *Adkins v. State,* 324 Md. 641, 646, 598 A.2d 194 (1991). Thus, a case is justiciable where "there are interested parties asserting

adverse claims upon a state of facts which must have accrued wherein a legal decision is sought or demanded." *State Ctr., LLC v. Lexington Charles Ltd. Partnership*, 438 Md. 451, 591 (2014) (quoting *Boyd Civics Ass'n v. Montgomery County Council*, 309 Md. 683, 690 (1987)) (internal quotation marks omitted). See also *Frazier v. Castle Ford, Ltd.*, 430 Md. 144, 162–63, 59 A.3d 1016 (2013) (a case is moot if, "at the time it is before the court, there is no longer an existing controversy between the parties, so that there is no longer any effective remedy that the court can provide").

The same rule obtains under federal law. See, e.g., *NYSRPA, Inc. v. City of New York*, 140 S.Ct. 1525, 1526 (2020) (holding that the case became moot when the "State of New York amended its firearm licensing statute, and the City amended the rule" in such a manner as to accord the plaintiffs "the precise relief that [plaintiffs] requested in the prayer for relief in their complaint." As the Supreme Court stated recently, "[a] case is not moot . . . unless 'it is impossible for [us] to grant any effectual relief.'" *United States v. Washington*, __ U.S. __, 2022 WL 2203329, slip op. at 4 (U.S., June 21, 2022) (quoting *Mission Product Holdings, Inc. v. Tempnology, LLC*, 139 S.Ct. 1652, 1660 (2019) (brackets the Court's)). See also *Chafin v. Chafin*, 568 U.S. 165, 172, (2013) ("a case becomes moot only when it is impossible for a court to grant any effectual relief whatever to the prevailing party") (citation and internal quotes omitted).

The only real difference between federal mootness law and State mootness law is that under State law mootness is a jurisprudential concern, not a jurisdictional or constitutional matter. See *State v. Peterson*, 315 Md. 73, 82, 553 A.2d 672, 677 (1989) ("[T]here is no *constitutional* prohibition which bars [our courts] from expressing its views on the merits of a case which becomes moot during appellate proceedings.") (emphasis added)). Thus, under State law, a court may decide an otherwise moot case "where there is an imperative and manifest urgency to establish

a rule of future conduct in matters of important public concern." *Attorney General v. Anne Arundel County School Bus Contractors Ass'n,,* 286 Md. 324, 328, 407 A.2d 749 (1979).

Under federal mootness law, it is well established that "voluntary cessation of a challenged practice does not deprive a [court] of its power to determine the legality of the practice." *City of Mesquite v. Aladdin's Castle, Inc*., 455 U.S. 283, 289 (1982). See also *United States v. W.T. Grant Co*., 345 U.S. 629, 632 (1953) (allowing a voluntary cessation to moot a case would impermissibly mean that "[t]he defendant is free to return to his old ways" and "a public interest in having the legality of the practices settled, militates against a mootness conclusion"). "As long as the parties have a concrete interest, however small, in the outcome of the litigation, the case is not moot." *Chafin*, 568 U.S. at 172. The defendant bears a "heavy burden" to make such a showing. *Adarand Constructors, Inc. v. Slater*, 528 U.S. 216, 222 (2000) (*per curiam*).

Maryland law is in accord. In *State v. Neiswanger Management Services*, LLC, 457 Md. 441, 456 179 A.3d 941 (2018), the Court of Appeals laid out the controlling rule, stating "[a] party's voluntary cessation of conduct, or a change in the factual circumstances that formed the basis for seeking judicial relief does not require 'dismissal of the judicial proceedings on the grounds of mootness where the matter is a continuing controversy or the circumstances are likely to recur.'" (Citation omitted). The Court of Appeals further stated that the standard for determining whether a defendant's 'voluntary conduct' has mooted a case is 'stringent,' and subsequent events must make it 'absolutely clear' that the alleged misconduct 'could not reasonably be expected to recur.'" (Id.) (quoting *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs*., 528 U.S. 167, 189 (2000). As the Court explained, "[t]he party seeking to prove mootness carries a 'heavy burden.'" (*Id.*).

The *Neiswanger* Court also noted that an "'expectation of recurrence' may exist when the alleged misconduct was a 'continuing practice or was otherwise deliberate,'" and that mootness is

"more likely" if the defendant had a "genuine change of heart rather than his desire to avoid liability.'" (Id.) (quoting *Sheely v. MRI Radiology Network, P.A.*, 505 F.3d 1173, 1184-85 (11th Cir. 2007). Finally, the Court stressed that a "[r]efusal to acknowledge misconduct tends to support a conclusion that the cessation was motivated by a desire to evade liability, leaving a 'live dispute' between the parties." (Id. at 456-57) (quoting *Sheely*, 505 F.3d at 1187). See also *Carroll County Ethics Comm'n v. Lennon*, 19 Md.App. 49, 61, 703 A.2d 1338 (1998) ("[V]oluntary cessation of a challenged practice does not deprive [a court] of its power to determine the legality of the practice") (quoting *City of Mesquite v. Aladdin's Castle, Inc.*, 455 U.S. 283, 289 (1982)).

The *Neiswanger* also explained that Maryland courts are free to decide a case even if the case is moot where "the case contains unresolved issues of great public concern that 'merit an expression of our views for the guidance of courts and litigants in the future.'" (Id. at 457) (quoting *Robinson v. Lee*, 317 Md. 371, 376, 564 A.2d 395 (1989). Such a situation is presented, the Court noted, where such future conduct involves "the 'relationship between government and its citizens or a duty of government,' and is likely to evade review in the future." (Id.) quoting *La Valle v. La Valle,* 432 Md. 343, 352, 69 A.3d 1 (2013). Applying these considerations, the Court in *Neiswanger* concluded that in the case before it, the "changed circumstances" did not render the case moot, but that even if the changed circumstances were sufficient to moot the case, the Court ruled that would still decide the issues presented because the defendant there had engaged in deliberate conduct, had ceased the challenged conduct only after being sued and had never admitted any misconduct or illegality. *(Id.*).

B. The County Cannot Carry Its "Heavy Burden" Of Showing Mootness

The County fails at the first step of the analysis which is that County must show the proposed legislation accords "the precise relief that [plaintiffs] requested in the prayer for relief in

their complaint," *NYSRPA*, 140 S.Ct. at 1526, and that "there is no longer any effective remedy that the court can provide," *Frazier*, 430 Md. at 162–63, and that there are no longer any "adverse claims" still present by the enactment of the proposed legislation, *Lexington Charles Ltd. Partnership*, 438 Md. at 591. If the "parties have a concrete interest*, however small*, in the outcome of the litigation, the case is not moot." *Chafin*, 568 U.S. at 172 (emphasis added).

For example, in *NYSRPA*, the plaintiffs had "sought declaratory and injunctive relief" against a New York City ordinance regulating transport of firearms through the City. The Supreme Court dismissed the case as moot only after the City had amended it ordinance to accord plaintiffs "the precise relief that [plaintiffs] requested in the prayer for relief in their complaint," 140 S.Ct. at 1526, and only then after "the State enacted a law making the old New York City ordinance illegal." Id., 140 S.Ct. at 1528 (Alito, J., dissenting). Similarly, in *Frazier*, the Court of Appeals stressed that "[c]ourts generally decide whether a matter is moot as a result of a tender of relief by examining whether the tender encompasses *all* of the relief to which a party may be entitled." 430 Md. at 163 (emphasis the Court's). Applying that test, the Court in *Frazier* reversed the Court of Special Appeals' holding that a tender of full compensatory relief mooted the case, holding that the plaintiff in that case may have also been entitled to punitive damages. (Id.).

The County here simply cannot show that its actions "encompass all of the relief" to which plaintiffs are entitled. First, and most importantly, unlike *NYSRPA*, the proposed legislation **does not repeal** Bill 109-21 at all. Rather, all the proposed legislation does is add a contingency for the full and immediate enforcement of the Bill. This course of action does not accord "the precise relief" (much "*all"* the relief) plaintiffs requested. Specifically, plaintiffs sought declaratory relief that Bill 109-21 is beyond the power of the County to enact under Article XI-A § 3, and Article XI-E § 6 of the Maryland Constitution, under the Express Power Act, MD Code, Local

Government, § 10-206(a),(b), and is impliedly preempted by the comprehensive State regulatory scheme that govern dealer operations in Maryland, including, of course, the General Assembly's recent enactment of HB 1021. Plaintiffs also sought declaratory relief that Bill 109-21 was fatally vague under Article 24 of the Maryland Declaration of Rights.

These claims are interrelated and, taken together, they present a fundamental challenge to the County's assertion of power to regulate dealers in particular and firearms in general through the expedient of redefining the terms of MD Code, Public Safety, § 4-209(b)(1)(iii), in such manner as to expand the reach of a County ordinance. As detailed in plaintiffs' motion for summary judgment, Bill 109-21 is an illegitimate power grab that flies in the face of the broad preemption provisions of Section 4-209(a), to which subsection 4-209(b)(1)(iii) is but a limited, narrow exception. Bill 109-21 is also contrary to preemption provisions of other parts of the Maryland Code, including most notably MD Code, Public Safety, § 5-104, which broadly supersedes and preempts county regulation of regulated firearms dealers, such as the plaintiffs dealers in this case. The County has not abandoned its misuse of Section 4-209(b); it has not "tendered" full relief on plaintiffs' claims. Rather, it has simply postponed the effective date of Bill 109-21 without conceding or admitting that plaintiffs' claims have merit. In particular, nothing in the proposed legislation addresses plaintiffs' claim that the County does not possess the broad regulatory powers it asserts it has under subsection 4-209(b)(1)(iii). Certainly, nothing in the proposed legislation remotely addresses plaintiffs' claim that Bill 109-21 is unconstitutionally vague and is not a local law within the meaning of Maryland's Constitution.

Plaintiffs seek both injunctive and declaratory relief and each of these two types of relief must be analyzed separately for purposes of mootness. This point was stressed by Court of Special Appeals in *Carroll County Ethics Com'n*., a case in which the Carroll County Ethics Commission

had found that the plaintiff (Lennon) had violated a county ethics ordinance while serving on a planning and zoning commission. Lennon filed suit against the Ethics Commission and obtained declaratory and injunctive relief in the lower court. The Ethics Commission appealed and Lennon argued that the case was mooted and the appeal should be dismissed because he had resigned from the planning and zoning commission and had assured Carroll County he would refrain from the conduct that had led to the finding by the Ethics Commission.

The Court of Special Appeals rejected the mootness claim, concluding that the case was not moot because court could still "'fashion an effective remedy.'" *Carroll County Ethics Com'n.*, 119 Md.App. at 57, quoting *Adkins*, 324 Md. at 646. The court reasoned that the defendant's claim of mootness "overlooks the critical distinction between the two remedies he requested in his lawsuit: an injunction and a declaratory judgment." (Id. at 58). The court explained that injunctive relief was appropriate to control "future acts," while [d]eclaratory relief, by contrast, is a 'remedy for the determination of a justiciable controversy where the plaintiff is in doubt as to his legal rights.'" (Id.) (quoting Law Dictionary 784 (6th ed.1990). The court also looked to and adopted the approach applicable to federal law, noting that the "Supreme Court has stated that 'different considerations enter into a federal court's decision as to declaratory relief, on the one hand, and injunctive relief, on the other.'" (*Id.*) (quoting *Steffel v. Thompson*, 415 U.S. 452, 469 (1974).

The court in *Carroll County Ethics Com'n,* also relied on *Super Tire Engineering Co. v. McCorkle*, 416 U.S. 115, 121 (1974). (119 Md.App. at 59). There, the Supreme Court held that even though events had effectively mooted the request for injunctive relief, "the parties to the principal controversy ... may still retain sufficient interests and injury as to justify the award of declaratory relief." *Super Tire*, 416 U.S. at 121. The Court thus ruled that a case is not moot where there is "the existence of an immediate and definite governmental action or policy that has

adversely affected and continues to affect a present interest." (Id. at 126). Applying these principles, the court in *Carroll County Ethics Com'n.* held that while Lennon's voluntary resignation from the planning and zoning commission mooted the claim for "*injunctive relief*," the "principal controversy as to whether Lennon's activities fall within the ambit of the Carroll County Ethics Ordinance is very much 'alive' and need of resolution." (Id. at 59) (emphasis the court's). The key question, the court ruled, was whether "there is [still] an existing controversy between the parties," id. at 60, quoting *Anne Arundel School,* 286 Md. at 327, "and whether the parties continue to assert adverse legal positions in which they maintain a concrete interest." (Id., citing MD Code, Courts and Judicial Proceedings, § 3-409(a)(3)). Under these principles, the court concluded that the case was not moot. (Id. at 60).

Here, as in *Carroll County Ethics Com'n.,* the County's enactment of this proposed legislation may effectively moot the need for immediate preliminary injunctive relief, as the proposed legislation adds a contingency that puts off indefinitely the effective date of Bill 109-21. Even so, plaintiffs and the County "continue to assert adverse legal positions" with respect to the legality of Bill 109-21, which remains on the books. Plaintiffs are still regulated by the Bill, albeit with a different type of effective date than originally enacted. Plaintiffs unquestionably remain "in doubt as to [their] legal rights." *Carroll County Ethics Com'n.*, 119 Md.App. at 58. Bill 109-21 continues to directly conflict with the regulatory scheme of HB 1021 for security measures at State licensed dealers. The County's power to enact such laws remains very much at issue. These realities will continue to affect the relationship between dealers and the County into the future. See, e.g., *Firefighters Local Union No. 1784 v. Stotts*, 467 U.S. 561, 585 (1984) (O'Connor, J., concurring) (collecting cases) ("When collateral effects of a dispute remain and continue to affect the relationship of litigants, the case is not moot."). This Court can still "fashion an effective

remedy" in the case by issuing a declaratory judgment on each of plaintiffs' claims. No more is required to deny a claim of mootness.

The County also cannot carry the "heavy burden" of demonstrating that it is "[i]t 'absolutely clear' that the alleged misconduct 'could not reasonably be expected to recur.'" *Neiswanger*, 457 Md. at 456) (quoting *Friends of the Earth, Inc*., 528 U.S. at 189. Factors to be considered in this inquiry include whether the challenged practice "was deliberate," whether the change in conduct was "motivated by a defendant's genuine change of heart, rather than his desire to avoid liability," and whether the defendant has refused "to acknowledge misconduct." *Neiswanger*, 457 Md. at 456. All of these factors militate against the County here. The County not only refuses to acknowledge that Bill 109-21 is beyond its powers, it affirmatively asserts that it has the power to redefine the subsection 4-209(b)(1)(iii) exceptions to regulate State licensed firearms dealers notwithstanding the express preemption provisions of Maryland law. There has been no "change of heart" by the County. The County need only repeal its proposed legislation (assuming that it is actually enacted) and Bill 109-21 would become immediately effective, as the 180-day period for compliance set forth in Bill 109-21 would have expired. See Part I, *supra*. A dismissal on mootness would leave the County free to do exactly that without warning. Plaintiffs are not required to trust the County.

Fundamentally, unlike the New York City ordinance at issue in *NYSRPA*, the County has **not** actually repealed the offending provisions of Bill 109-21, and, unlike the State of New York in *NYSPA*, the Maryland General Assembly has **not** enacted any statute that would bar the County from resurrecting Bill 109-21. Those circumstances in *NYSRPA* made clear that the plaintiffs in *NYSPA* had gotten the "precise" equitable relief that they had requested and that it was "impossible" for any Court to award them "any effectual relief whatsoever." *Chafin*, 568 U.S. at 172. The New

York State legislature's enactment of legislation that banned the City from reenacting the repealed ordinance also made clear that the NYC ordinance could not legally recur. Here, in contrast, the County has not repealed Bill 109-21. As explained above, the County need only repeal (or not enact) the proposed legislation to allow Bill 109-21 to become effective. Such repeal would thus leave no time for plaintiffs to mount a renewed challenge in this Court, much less seek appellate review.

The County has not retreated an *iota* from its insistence that it has the power to enact Bill 109-21 under subsection 4-209(b)(1)(iii). It likewise has not offered any binding assurance that it would not elect to impose similar or additional requirements on dealers in the future under the same expansive and unlawful reading of subsection 4-209(b)(1)(iii) it used to justify its original enactment of Bill 109-21. Indeed, it is doubtful that the County could ever be held to any such assurance. See, e.g., *ARA Health Serv., Inc. v. Department of Public Safety and Corr. Serv*., 344 Md. 85, 96, 685 A.2d 435 (1996) ("Ordinarily, the doctrine of estoppel does not apply against the State"); *Heartwood 88, Inc. v. Montgomery County,* 156 Md.App. 333, 371, 846 A.2d 1096 (2004) ("the doctrine of equitable estoppel cannot 'defeat the municipality in the enforcement of its ordinances,' or in its "required adherence to the provisions of its charter," merely because of 'an error or mistake committed by one of its officers or agents'") (quoting *Inlet Associates v. Assateague House Condominium Ass'n.*., 313 Md. 413, 437, 545 A.2d 1296 (1988)). Plainly, the County cannot carry its burden of making it "absolutely clear" that the same or similar requirements of Bill 109-21 will never be enforced. *Neiswanger*, 457 Md. at 456. To the contrary, the proposed legislation plainly contemplates that Bill 109-21 may well be enforced. There is no other point to the contingency provisions of that bill.

C. The Issues Are of Matters of Public Importance

Even assuming *arguendo* that the case is moot, here, as in *Neiswanger*, this Court should still render a decision on each of plaintiffs' claims as "the case contains unresolved issues of great public concern that 'merit an expression of our views for the guidance of courts and litigants in the future.'" *Neiswanger*, 457 Md. at 457 (citation omitted). For example, in *County Ethics Com'n.*, the Court of Special Appeals held that even if that case was moot, it would still decide the matter because "it 'involves matters of public importance that are likely to recur if not decided now.'" (119 Md.App. at 60) (quoting *Anne Arundel County Professional Firefighters Association v. Anne Arundel County*, 114 Md.App. 446, 455, 690 A.2d 549, 553 (1997). See also *Robinson v. Lee*, 317 Md. 371, 376, 564 A.2d 395 (1989) (moot questions may be addressed when they "merit an expression of our views for the guidance of courts and litigants in the future"); *Attorney General v. Anne Arundel County School Bus Contractors Ass'n, Inc*., 286 Md. 324, 328, 407 A.2d 749 (1979) (noting that a court may decide a moot question where, "because of inherent time constraints," the question "may not be able to be afforded complete appellate review").

Certainly, the County's powers under the exception provisions of subsection 4-209(b)(1)(iii) are "matters of public importance." (Id. at 60). That issue affects not only dealers, but could also affect every other County resident. If the County may redefine "place of public assembly" for the purpose of regulating dealers, it can just as easily similarly redefine the term broadly and vaguely so as to escape entirely the broad preemption otherwise imposed by Section 4-209(a) and thus regulate possession, sales, transfers and transport of firearms by all residents of the County.

Indeed, Montgomery County has done just that with its recent enactment of Bill 4-21 which redefined "place of public assembly," as used in subsection 4-209(b)(1)(iii), by amending

Montgomery County Code § 57-1, to define the term to mean a "place where the public may assemble, whether the place is publicly or privately owned ….." Montgomery County then uses that amended definition to regulate, virtually County-wide, the possession, transport, transfer, sale, assembly, and manufacture of all firearms within 100 yards of this extraordinarily broad definition of "place of public assembly." See Montgomery County Code 57.11(a). Such legal shenanigans effectively guts the broad preemption otherwise imposed by Section 4-209(a). MSI and others, including a State and federally licensed firearms dealer (Engage Armament), have thus challenged that redefinition of "place of public assembly" in litigation that is currently pending in Montgomery County Circuit Court.[1] Anne Arundel County could elect to follow Montgomery County's lead, just as the County asserts that it followed Baltimore County's example in regulating dealers in enacting Bill 109-21. Guidance from the courts is urgently needed to address the County's misuse of Section 4-209(b)(1)(iii).

In sum, this matter plainly involves "the 'relationship between government and its citizens or a duty of government.'" *Neiswanger*, 457 Md. at 457. Just as plainly, "the case contains unresolved issues of great public concern that 'merit an expression of our views for the guidance of courts and litigants in the future.'" (*Id*.). Plaintiffs' claims are "in need of resolution." *Carroll County Ethics Com'n*., 119 Md.App. at 59. For all these reasons, the Court should reach and decide the pending cross-motions for summary judgment and establish State precedent on these points. See *MSI v. Montgomery County*, 2022 WL 375461 at *5 (D. Md. Feb. 7. 2022) (remanding MSI's suit against Montgomery County (which the County had removed to federal district court) back to

[1] See *MSI v. Montgomery Co*., No. 485899V (Cir. Ct., Mont. Co., filed May 28, 2021).

State court, noting that the preemption issue was "a matter of first impression" and that "[t]he Maryland courts . . . have not considered Plaintiffs specific theory . . . that the County's broadened definition of 'place of public assembly' has expanded the regulation of firearms beyond what is permitted by section 4-209(b)").

CONCLUSION

This Court should grant plaintiffs' motion for summary judgment or alternative motion for a preliminary injunction, and deny defendant's motion to dismiss and alternative motion for summary judgment. Although the County has represented that it would not enforce Bill 109-21 until October 23, 2022, plaintiffs respectfully request that the Court decide all pending motions well prior to August 23, 2022, the effective date of Bill 109-21 for existing dealers.

Respectfully submitted,

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Dated: June 25, 2022