

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

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MARYLAND SHALL ISSUE, ET AL., :
:
Plaintiffs, :
:
v. : Civil No. 485899
:
MONTGOMERY COUNTY MARYLAND, :
:
Defendant. :
:
-----X

MOTIONS HEARING

Rockville, Maryland

July 19, 2022

**EXHIBIT A**

DEPOSITION SERVICES, INC.  
P.O. BOX 1040  
Burtonsville, Maryland 20866  
(301) 881-3344

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

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MARYLAND SHALL ISSUE, ET AL., :
      Plaintiffs,                :
      v.                          :      Civil No. 485889
MONTGOMERY COUNTY MARYLAND,    :
      Defendant.                 :
-----X

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Rockville, Maryland  
July 19, 2022

WHEREUPON, the proceedings in the above-entitled  
matter commenced

BEFORE: THE HONORABLE JILL REID CUMMINS, JUDGE

APPEARANCES:

FOR THE PLAINTIFFS:

MARK W. PENNAK, Esq.  
7416 Ridgewood Avenue  
Chevy Chase, Maryland 20815

FOR THE DEFENDANT:

EDWARD B. LATTNER, Esq.  
SEAN C. O'HARA, Esq.  
Montgomery County Attorney's Office  
101 Monroe Street, Third Floor  
Rockville, Maryland 20850

1           So, you have the inconsistent provisions under the  
2 state enactment of the ghost gun legislation, SP 387. You have  
3 inconsistent provisions where the varying regulations of the  
4 possession, transport and transfer of firearms throughout the  
5 state, and, versus 4-421. So, I don't know that there is  
6 anything left of the County's argument, especially after Bruen.

7           THE COURT: Okay.

8           MR. PENNAK: So, I would submit that it has to be  
9 struck down in its entirety, and in fact 4-209(b) should be  
10 very narrowly construed, in order to save its  
11 constitutionality, and I want to be very specific about that.  
12 Places of public assembly are void. Anything regulating places  
13 of public assembly are void because it wasn't mentioned among  
14 the five, by the Supreme Court in Bruen, and the County hasn't  
15 come up with any historical analogy. So, places where, parks  
16 are void because there is no historical analogy. Places of  
17 churches, or houses of worship are void because there is no  
18 historical analogy.

19           The county can regulate public buildings, regulate  
20 places where the county council and legislative assemblies,  
21 they can do that. They can regulate the schools and regulate  
22 any other five that the Supreme Court mentioned, but beyond  
23 that, 4-209 cannot authorize any regulation at all, unless the  
24 county comes forward with proof of historical analogy, and it  
25 is the County's burden, not mine. So, 4-21 is dead, and the

1 Court should so hold.

2 THE COURT: Okay.

3 MR. PENNAK: I'd be happy to answer any court  
4 questions.

5 THE COURT: Thank you. Thank you, Mr. Pennak.

6 MR. PENNAK: Thank you.

7 THE COURT: All right. On behalf of the County.

8 MR. LATTNER: Thank you, Your Honor. Edward Lattner  
9 again for the County. Contrary to what I was taught in law  
10 school, I'm going to start very briefly with the least  
11 important thing, which is Bruen, which may be an elephant, but  
12 it's not in the room, and it's not in the room because there is  
13 no Second Amendment claim in this case, although plaintiffs  
14 have peppered their pleadings with references, and have filed  
15 an entire supplement dedicated to the Second Amendment. There  
16 is in fact no Second Amendment claim. So, there is nothing for  
17 the Court to decide on that issue. That's the short answer.

18 Beyond that, the plaintiff, I'm sorry, the county has  
19 removed the federal claims to federal court, where count four,  
20 the due process claim under the Fourteenth Amendment is still  
21 pending, and I have to imagine the county would also be seeking  
22 to remove any Second Amendment claim to federal court as well,  
23 and that's if the plaintiffs decide to amend and actually state  
24 a Second Amendment claim.

25 I'll also note that this is a challenge to Bill 4-21,

1 not to the statute as a whole. This complaint is cast, and the  
2 case has been argued as to challenge to 4-21, which was  
3 amendments to the county's firearm law with regard to ghost  
4 guns, and undetected guns. So, that's enough said about the  
5 Second Amendment.

6 Also, let me just, another preliminary matter.  
7 Plaintiffs refer to this repeatedly as a ban, a ban. It's not  
8 a ban. It is, it is, or it is a ban only to the extent of the  
9 presence of children, and places of public assembly, which is  
10 precisely what the state has allowed the county to regulate.  
11 It is not a, a county-wide ban on firearms throughout the  
12 county.

13 So, we ask that you grant the County's motion for  
14 summary judgment, and enter a declaratory judgment, finding  
15 that Bill 4-21 is not preempted by, or in conflict with state  
16 law, and does not amount to a taking under state law. My  
17 co-counsel, Sean O'Hara, will address briefly the takings  
18 claim.

19 The state has, it is true, expressly preempted much  
20 firearm regulation at the local level, but since 1985, in  
21 statute 4-209 of the Criminal Law Article, the state has  
22 specifically, and expressly authorized local regulation of  
23 firearms with respect to minors, and within 100 yards of or in  
24 a park, church, school, public building, and other place of  
25 public assembly. Field 4-21 fits within that authorization.

1 For decades the county has enacted laws under 4-209, in 1991  
2 and again in 1997 the Attorney General opined that these county  
3 laws were specifically authorized by 4-209 and were not  
4 preempted by the more general state preemption provisions that  
5 the plaintiffs now rely on.

6 The plaintiffs would ask this Court to disregard that  
7 explicit authorization. Bill 4-21 extends the County's  
8 regulation to unserialize ghost guns, and undetectable guns,  
9 and the bill fits comfortably within 4-209. Unless there are  
10 any questions I wasn't going to address the standing issues.  
11 We set those out in our motion to dismiss, and instead I'd like  
12 to turn to the motion for summary judgment.

13 THE COURT: Okay.

14 MR. LATTNER: And first, the local law issue.

15 THE COURT: So, wait a minute. Wait a minute. So, I  
16 just want to make sure. So, now you're moving to your  
17 affirmative motion, as opposed to the opposition to the  
18 plaintiff's motion.

19 MR. LATTNER: Well --

20 THE COURT: I know they overlap. I know they  
21 somewhat overlap. I just want to be --

22 MR. LATTNER: Right. I'm moving --

23 THE COURT: -- want to be clear on what we're, where  
24 we're transitioning to.

25 MR. LATTNER: Yes, I'm moving from the dismissal