

1 law. Count III alleges that Bill 4-21 constitutes an illegal Taking under the Maryland Takings
2 Clause, Article III, § 40 of the Maryland Constitution, and a deprivation of property without due
3 process in violation of Article 24 of the Maryland Declaration of Rights. The remainder of
4 plaintiffs' claims alleged in the Verified Second Amended Complaint, Counts IV, V, VI, VII and
5 VIII, were retained by the federal district court after removal by defendant and are not before
6 this Court.

7 In support of this renewed motion for summary judgment, plaintiffs hereby rely on and
8 incorporate by reference the Verified Second Amended Complaint, as filed in federal district
9 court on November 30, 2022, and the Declarations and Exhibits filed with the Second Amended
10 Complaint (Exhibits A through M). Those Declarations also accompany this Motion for
11 Summary Judgment. In further support of this motion for summary judgment, plaintiffs hereby
12 rely on and incorporate by reference the additional declarations filed in federal district court with
13 plaintiffs' motion for temporary restraining order and a preliminary injunction, filed on
14 December 6, 2022 (Exhibits N through R). Those declarations likewise accompany this Motion
15 for Summary Judgment. In further support of this Motion for Summary Judgment, plaintiffs rely
16 on the accompanying supporting memorandum of law, filed herewith, the proposed order, filed
17 herewith, the transcript of the February 6, 2023 hearing before the federal district court in this
18 case (Exhibit S) and any other filings or matters of record filed by plaintiffs in this case to date,
19 including the filings submitted by plaintiffs to the federal district court after the two removals
20 instigated by the defendant.

21 Plaintiffs move this Court to issue the accompanying Proposed Order granting declaratory
22 and injunctive review. Specifically, plaintiffs move this Court to issue a declaratory judgment
23 that declares that the State has "occupied the field" and that Chapter 57 is not a "local law" within

1 the meaning Maryland Constitution, Art. III, § 3, with respect to the issuance, use and regulation
2 of persons who have been issued a wear and carry permit under MD Code, Public Safety, § 5-
3 306, and declare that the County may not regulate the possession, transport, transfer and transport
4 of firearms or weapons by such persons.

5 Plaintiffs move this Court to issue a declaratory judgment that the State has “occupied
6 the field” and that Section 57-11 of the County Code is not a “local law” within the meaning
7 Maryland Constitution, Art. III, § 3, with respect to the sale, transfer, transport, or possession of
8 firearms or components of firearms or privately made firearms (“PMFs”) by any federal or State
9 licensed firearms dealer and that the County may not regulate any such licensed dealer on any
10 matter subject to or regulated by subtitle 1, Title 5, of the Public Safety Article or addressed by
11 the regulations issued under that subtitle by the Maryland State Police.

12 Plaintiffs move this Court to issue a declaratory judgment that the State has “occupied
13 the field” and that Sections 57-10 and 57-11 of the County Code are not “local laws” within the
14 meaning Maryland Constitution, Art. III, § 3, with respect the “keeping” of “guns on person or
15 in vehicles,” and that the County may not regulate the possession, sale, transport or transfer of a
16 firearm, or components with respect to the “keeping” of firearms on the person or in a vehicle or
17 otherwise regulate the sale, possession, transport or transfer of regulated firearms or components
18 or of long guns or of privately made firearms (“PMFs”), to the extent that such sale, possession,
19 transport, or transfer are otherwise permitted by State law.

20 Plaintiffs move this Court to issue a declaratory judgment that the County may enact a
21 local law that regulates “access” to firearms by minors under Section 57-7, as permitted by MD
22 Code, Criminal Law, § 4-209(b)(1)(i), but that the County may not regulate the possession, sale,
23 transport, or transfer of firearms by adults in the presence of minors. The Court should further

1 declare that the County may not ban the access to or the possession of a firearm by a minor who
2 has a hunter safety certificate, as otherwise permitted by MD Code, Criminal Law, § 4-104, and
3 MD Code, Public Safety, § 5-133(d).

4 Plaintiffs move this Court to issue a declaratory judgment that the County may not ban
5 the temporary transfer, possession or transport of any firearm or components or PMFs under the
6 supervision of the minor’s parents or instructors or otherwise qualified individuals, as otherwise
7 permitted by State law, or otherwise interfere with the fundamental constitutional right of parents
8 to supervise and instruct their minor children in the handling, maintenance and use of firearms
9 and components, as otherwise permitted by State law.

10 Plaintiffs move this Court to issue a declaratory judgment that states that, in so far as
11 Chapter 57 has banned the continued possession of otherwise lawful privately made firearms and
12 components of firearms, the County has committed a Taking of private property without just
13 compensation in violation of Article III, § 40 of the Maryland Constitution and Article 24 of the
14 Maryland Declaration of Rights.

15 Plaintiffs move this Court to enter a permanent injunction barring the County from
16 enforcing any provision of County Code Chapter 57 that is inconsistent with the Court’s
17 declaration of rights. Specifically, plaintiffs move this Court to enter a permanent injunction
18 enjoining the County from enforcing those parts of County Code Section 57-1, that define “major
19 component,” “ghost guns,” and a “place of public assembly.”

20 Plaintiffs move this Court to enter an order permanently enjoining the County from
21 enforcement of County Code § 57-7, with respect to minors in the manner described above, and
22 further enjoin the County from enforcing any part of County Code § 57-10 and County Code §
23 57-11. Enforcement of County Code § 57-12 has already been enjoined in *Montgomery County*

1 *v. Atlantic Guns, Inc.*, 302 Md. 540, 489 A.2d 1114 (1985).

2 Finally, the Court should enjoin the County from enforcing any part of County Code
3 Chapter 57 against the named plaintiffs and any and all MSI members to the extent that Chapter
4 57 bars the continued otherwise lawful possession of PMFs and components under State law
5 during the past and into the future, until or unless the County pays or renders full and complete
6 just compensation for the taking of these items.

7 As detailed in the accompanying memorandum, plaintiffs are entitled to “just
8 compensation” on the takings claim set forth in Count III. The amount of such just compensation
9 has yet to be briefed by the parties and may well require an evidentiary hearing. Accordingly,
10 plaintiffs move this Court to issue an order pursuant to MD Rule 2-602 and hold that there is no
11 just reason for delay and enter final judgment granting declaratory and equitable relief on Counts
12 I and II and III, as described above. Such an order will permit an immediate appeal on questions
13 of law presented by these Counts, should any party so desire. The Court should schedule further
14 proceedings for a determination of the amount of just compensation due under Count III.
15 Defendant has not opposed this request for a Rule 2-602 determination in the past and plaintiffs
16 see no reason for further proceedings on this issue should any party seek immediate appellate
17 relief.

18 Plaintiffs do not challenge those parts of County Code Chapter 57 that pertain to the
19 County “Firearm Safety Committee (Section 57-2), to the County’s “urban area boundary”
20 (Section 57-3) or regulate the discharge of firearms (Section 57-4 and Section 57-5) or of bows
21 (Section 57-6). Plaintiffs also do not challenge the requirement concerning the distribution of
22 child safety devices with the sale of a handgun (Section 57-8), or that part of Chapter 57 that
23 regulates the unlawful ownership or possession of firearms by persons who are otherwise

1 disqualified from ownership or possession of firearms by applicable State and federal law,
2 (Section 57-9). Plaintiffs do not challenge the right of the County to regulate the conduct and
3 activities of County law enforcement officers and agencies, as authorized by MD Code, Criminal
4 Law, § 4-209(b)(1)(ii). Nor do plaintiffs challenge the County’s right to control the use of public
5 funds, as regulated by Section 57-13. Plaintiffs do not challenge County Code Section 57-14,
6 addressing “exemptions” from Chapter 57, or the penalty provisions of County Code Section 57-
7 15, or the reporting provisions imposed on the County Police by County Code Section 57-16.
8 Plaintiffs move this Court for an order severing those subsections of Chapter 57 from the rest of
9 Chapter 57.

10 **CONCLUSION**

11 For all the foregoing reasons, this Court should grant plaintiffs’ motion for summary
12 judgment for declaratory and equitable relief on Counts I, II and III of the Complaint. The Court
13 should apply MD Rule 2-602 and hold that there is no just reason for delay and enter final
14 judgment granting declaratory and equitable relief for plaintiffs on these Counts. The Court
15 should schedule further proceedings for a determination of just compensation under Count III.

16 Respectfully submitted,

17 /s/ Mark W. Pennak

18 MARK W. PENNAK
19 Maryland Shall Issue, Inc.
20 9613 Harford Rd, Ste C #1015
21 Baltimore, MD 21234-21502
22 mpennak@marylandshallissue.org
23 Phone: (301) 873-3671
24 MD Atty No. 1905150005
Counsel for Plaintiffs

Dated: July 5, 2023.

